

Vol. I of II

1-444

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NASSAU : CRIMINAL TERM PART 80

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THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 2415N/08

-against-

HAROLD GOPAUL, : SEX ABUSE 1

Defendant. : Trial

-----X

May 6, 2009

252 Old Country Road
Mineola, New York

B E F O R E:

HONORABLE JAMES P. MacCORMACK,
Acting Supreme Court Justice

A P P E A R A N C E S:

HON. KATHLEEN M. RICE
Nassau County District Attorney
For the People
BY: JAMIE JOHNSON, ESQ.,
Assistant District Attorney
of Counsel.

DONALD R. SCHECHTER, ESQ.
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80-02 Kew Gardens Road - Suite 1030
Kew Gardens, New York 11415

* * *

WENDY SILAS
Senior Court Reporter

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1 A F T E R N O O N S E S S I O N

2 THE CLERK: This is the case on trial, the
3 People of the State of New York against Harold Gopaul,
4 Indictment 2415N of 2008.

5 Are the People ready?

6 MS. JOHNSON: Yes, we're ready.

7 THE CLERK: Is defense counsel ready?

8 MR. SCHECHTER: Ready.

9 THE COURT: Mr. Schechter?

10 MR. SCHECHTER: Yes, I notice on the People's
11 witness list they're having Denise Alioto and Christine
12 Alioto.

13 Denise Alioto is the former foster parent of
14 Sana Awan and Christine is her daughter.

15 Counsel, I would imagine based upon her
16 representations to the Court, is going to use one or
17 both as instant outcry witnesses. I think that using
18 them both would be cumulative and bolstering and
19 improperly bolstering and I would ask for an offer of
20 proof as to the reason why Denise Alioto is being used,
21 the mother is being used, as a witness.

22 From what I understand, Christine Alioto is
23 the instant outcry witness.

24 MS. JOHNSON: Judge, she is not -- the mother
25 is not only an outcry witness along with the daughter,

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1 but the mother actually takes the victim into her own
2 home, cares for her during the time that she is removed
3 from the defendant's home, brings her to the precinct
4 to report the incident. She's -- chronologically,
5 she's part of the narrative of events and she's part of
6 the prompt outcry aspect of the case.

7 THE COURT: What relevance would Denise
8 Alioto, insofar as her caring for Sana Awan -- assuming
9 this is all post-arrest, yes?

10 MS. JOHNSON: Yes, Judge.

11 THE COURT: What relevance does that have to
12 do with your case or proving the elements in your case?

13 MS. JOHNSON: It's important for the jury to
14 understand that aside from the outcry aspect of it,
15 that the victim was living with this family as she was
16 removed by her own choice, eventually by probably CPS's
17 choice, from the defendant's home.

18 THE COURT: And what does that add to your
19 case other than, perhaps, shedding some sympathy for
20 the victim?

21 MS. JOHNSON: I don't think it's sympathy for
22 the victim, it's to explain that -- and it corroborates
23 the victim's testimony that she didn't go back to the
24 home, that she stayed with this family -- she's no
25 longer living with them anymore, she's actually living

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1 on her own.

2 MR. SCHECHTER: Denise could provide that --
3 the child could provide that, Christine. That's the
4 instant outcry witness.

5 THE COURT: Right, I'm not going to permit
6 some other witness's testimony about where this
7 complainant lived after the event. I mean, certainly
8 the complainant could testify to that.

9 The other issue is are both of these people
10 going to be put forth as prompt outcry witnesses or is
11 there just one?

12 MS. JOHNSON: They are both, your Honor.

13 THE COURT: And both in the sense that
14 they're both there at the same time or there's -- is
15 there two instances of prompt outcry?

16 MS. JOHNSON: What happens is the victim
17 calls Christine Alioto, the best friend, the teenager,
18 and outcries to her.

19 Immediately Christine panics and gives the
20 mother to her phone (sic) and in the same phone call,
21 seconds later, she outcries to the mother and then the
22 mother comes with Christine to pick up the victim to
23 take them to the 105th Precinct.

24 So obviously they would not be testifying as
25 to the nature of the complaint, the mere outcry and

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1 timing of it, because the mother does speak with the
2 victim on the phone along with the friend.

3 THE COURT: Does the victim say the same
4 thing to both of them or says only certain things to
5 the daughter -- to the friend, I should say, and then
6 certain things to the mother?

7 MS. JOHNSON: In sum and substance it is
8 pretty similar to what she says to both of them.

9 THE COURT: And you're objecting to that?

10 MR. SCHECHTER: As bolstering and cumulative.
11 The only purpose for it is to show sympathy.

12 Additionally, if you will you'll recall, I
13 had subpoenaed ACS records. Part of the ACS records
14 are the reasons she left that home.

15 I have reason to believe she left that home
16 under very negative circumstances and I believe ACS has
17 a record of that and I would like to know what those
18 records contained and I believe those records were
19 subpoenaed. I don't know if they sent them to the
20 Court.

21 THE COURT: I have not received the FedEx
22 package. They told me I was going to get it, unless
23 it's at the clerk's office across the way.

24 MR. SCHECHTER: I need those records, your
25 Honor, simply to as --

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1 THE COURT: I understand.

2 And also, I would just indicate to you as
3 well, certainly it's my position that any statements
4 made by the complainant insofar as -- concerning the
5 allegations with respect to your client, I would
6 certainly consider to be Rosario material, that you
7 would be entitled to them.

8 On the other hand, as I looked at the
9 subpoena closely, you also asked for information
10 concerning the removal of the complainant from
11 Ms. Alioto's home.

12 MR. SCHECHTER: Yes.

13 THE COURT: And, as with the People, I also
14 would have the same view as to the defendant as to the
15 relevancy of that material insofar as this trial is
16 concerned.

17 MR. SCHECHTER: They're putting a witness or
18 two witnesses on the stand basically to say that --
19 lovey-dovey, lovey-dovey, lovey-dovey, "We took her
20 into our house. She told us she was sexually abused.
21 We went to the precinct and, oh, Lordy."

22 She made statements, from what I understand,
23 my investigation has revealed, she was ejected from the
24 adoptive parents' house. They threw her out of the
25 house.

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1 Now, I want to know why. I think I'm
2 entitled to know why, especially if she's going to call
3 them as witnesses and I should not be bound by what
4 they say on the witness stand to possibly put
5 themselves in a favorable light.

6 THE COURT: If she was ejected what relevance
7 would that have?

8 How would that play into your defense?

9 How would that be relevant to the jury's
10 consideration of the charges here?

11 MR. SCHECHTER: Because I don't know what
12 things she said to them. There were things going back
13 and forth at this time by the complaining witness and
14 them and I don't know what was said by each to the
15 other. There was a reason why she left that house and
16 she didn't leave that house under favorable
17 circumstances and I'm entitled to know that.

18 I had attempted to find that out. I had my
19 investigators attempt to speak to Ms. Alioto and he was
20 told in no uncertain terms that she under no
21 circumstances will speak to him.

22 So I would like, if possible, to get that
23 information I subpoenaed for at least to have the Court
24 look at it.

25 THE COURT: I have every intention of looking

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1 at it, but you're talking about something that
2 obviously happened months after --

3 MR. SCHECHTER: Yes.

4 THE COURT: -- your client was arrested, I
5 assume.

6 MR. SCHECHTER: Yes, within the last month or
7 two.

8 THE COURT: And other than probably some
9 indication in those records that, yes - and, again, I
10 haven't seen them - that there was some indication
11 there that the Aliotos thought that Sana Awan had made
12 up these allegations concerning your client or had
13 fabricated them, for example, for some reason of her
14 own, that I would think you would certainly be entitled
15 to, even if it was, perhaps, post your client's arrest.

16 But the circumstances under which she may
17 have been removed from the Alioto's house, I really --
18 I'm going to look at the records, but I don't see what
19 that would have to do or why, for that matter, those
20 materials would have to be turned over to you other
21 than in the circumstance I was just indicating.

22 The same way I don't think the People are
23 going to be entitled to elicit from the Alioto's the
24 circumstances under which Sana Awan had lived in their
25 house.

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1 People, you better make a choice as to which
2 of the Alioto's you're going to be calling for your
3 prompt outcry.

4 MS. JOHNSON: Well, your Honor, if that's the
5 Court's ruling we would intend to call the friend as
6 the outcry witness, but I would still offer the mother
7 for purposes of her testimony that she picked up Sana
8 Awan and brought her to the precinct on such and such a
9 date at such and such a time and if that would be the
10 scope of her testimony, then that would be it.

11 THE COURT: Then that would be the scope of
12 her testimony.

13 MS. JOHNSON: I would submit to the Court --

14 THE COURT: Okay.

15 MS. JOHNSON: -- that I should at least ask
16 her whether or not, without the circumstances, if Sana
17 lived with her, but the Court would not allow that,
18 then her limited testimony would be simply from when
19 and where they picked Sana up and where they went.

20 MR. SCHECHTER: Was Christine with her?

21 If she was, Christine could also testify, "My
22 mother, Sana and I went to the precinct."

23 THE COURT: I'm not going to start nitpicking
24 or previewing what these witnesses are going to say.

25 Obviously, I've made a ruling that the People

1 are going to be forced, if you will, for lack of a
2 better expression, to choose one of the two as far as
3 an outcry witness is concerned.

4 I'll allow them to elicit the fact that the
5 mother drove the complainant to the precinct and
6 dropped her off.

7 Insofar as the living relationship or
8 relationship thereafter between the complainant and Ms.
9 Alioto, I don't think it's relevant for this jury.

10 Mr. Schechter, I know I gave you or somebody
11 gave you the Antommarchi waiver.

12 MR. SCHECHTER: I gave it to the officer to
13 give to your Honor.

14 THE OFFICER: I gave it to the clerk.

15 MS. JOHNSON: Does your Honor's ruling with
16 regard to what Mrs. Alioto be able to testify to also
17 apply to the victim?

18 I believe it would be relevant for the victim
19 to testify after the incident and up until now she is
20 not living with the defendant and has removed herself
21 from the home, was living with a friend who she trusted
22 and now is living out on her own.

23 THE COURT: In terms of background
24 information regarding your client and her current
25 situation I will allow that, but on a very limited

1 basis.

2 Mr. Gopaul, I'm showing you what is a --
3 what's known as a waiver of right to be present during
4 sidebar conference, otherwise known as an Antommarchi
5 waiver. It bears your name, today's date. It reads as
6 follows:

7 "Defendant Harold Gopaul, having been
8 furnished with a copy of Indictment 2415N/08 and having
9 been informed of his right to be present during sidebar
10 discussions with prospective jurors and/or discussions
11 of law and after consulting with his attorney hereby
12 gives up his right to be present during such sidebar
13 conferences. This waiver may be revoked at any time."

14 Is that your signature that appears -- one of
15 the two signatures that appears at the bottom right of
16 that paper?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And, Mr. Schechter, that's your
19 signature that appears below?

20 MR. SCHECHTER: It is.

21 THE COURT: And, Mr. Gopaul, you had an
22 opportunity to go over this Antommarchi waiver and its
23 meaning with Mr. Schechter?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And is it your intention at this

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1 time to waive your Antommarchi rights?

2 THE DEFENDANT: Yes.

3 THE COURT: And you do so freely and
4 voluntarily?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you have any questions of me
7 regarding this waiver?

8 THE DEFENDANT: No.

9 THE COURT: And as indicated in the waiver,
10 if you should change your mind at any time just
11 indicate that to Mr. Schechter.

12 THE DEFENDANT: Okay.

13 THE COURT: That will be marked as Court
14 Exhibit Number 1 -- Court Exhibit Number 2, excuse me.

15 MS. JOHNSON: What was Number 1?

16 THE CLERK: Rosario material.

17 THE COURT: Speaking of Rosario material,
18 People, you indicated your office is copying the
19 Rosario material?

20 MS. JOHNSON: They're doing it now, Judge.

21 THE COURT: I'm going to ask if at the end of
22 today you could provide the complete set of Rosario
23 material to Mr. Secretary Schechter.

24 MS. JOHNSON: I don't think I'm going to have
25 it done by the end of today. I can give him what I

1 have.

2 THE COURT: What you have or if Mr. Schechter
3 chooses to have it in the complete package by tomorrow
4 morning.

5 I indicated to Mr. Schechter that what I'm
6 intending to do is pick over the next two days,
7 depending on how fast we go. I don't think we'll go
8 beyond opening statements, at best, on Friday, if it
9 goes that far.

10 If not, we'll open and start with testimony
11 on Monday, so --

12 MS. JOHNSON: When would the Court be able to
13 tell us, just so I can start getting subpoenas for
14 witnesses?

15 THE COURT: I would definitely subpoena your
16 witnesses for Monday. There's going to be no testimony
17 between now and the end of the week, so the testimony
18 wouldn't won't start until Monday. The most beyond
19 jury selection will be opening statements.

20 MS. JOHNSON: Okay.

21 THE COURT: I indicated what -- what I
22 indicated to you previously, Mr. Schechter, and just to
23 put it on the record, that in terms of the
24 pre-screening, I'll tell the jurors very briefly the
25 nature of the case, the charges, after I introduce both

1 counsel and the defendant.

2 I will then conduct a pre-screening. I will
3 tell them that we anticipate the case to be over by
4 May 22nd, which is approximately a little over two
5 weeks; that if anybody has any type of planned
6 vacation, business trip, medical procedure that they
7 cannot rescheduled, any issue with regard to elder care
8 or child care that would render them unable to sit
9 during the course of the trial, what I will then do is
10 have one of my officers then direct them up
11 individually.

12 I will have them come up, identify themselves
13 in front of the bench here. We'll hear what they have
14 to say in terms of their reasons. I will not ask my
15 reporter to take down their explanations as they come
16 up.

17 However, if either one of you feel for any
18 reason that you would want to have a record of what
19 these prospective jurors say, by all means let me know
20 and I will certainly give you that, okay?

21 MS. JOHNSON: Judge, we just have to make the
22 motion to amend the indictment so that Jane Doe now
23 reads as Sana Awan, S-a-n-a, A-w-a-n, with regards to
24 all 14 counts on the indictment.

25 THE COURT: All right, Mr. Schechter, do you

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1 want to be heard on that at all?

2 MR. SCHECHTER: No, I have no objection.

3 That's going to be a matter of course anyway.

4 THE COURT: All right, anything else before
5 we bring in the prospective jurors?

6 MS. JOHNSON: No, nothing from the People.

7 THE COURT: Anything, Mr. Schechter?

8 MR. SCHECHTER: Not at this time, your Honor.

9 THE COURT: Okay.

10 (Panel of prospective jurors enters the
11 courtroom.)

12 THE CLERK: The case on trial, the People of
13 the State of New York against Harold Gopaul,
14 Indictment 2415N of 2008.

15 Are the People ready?

16 MS. JOHNSON: We are ready.

17 THE CLERK: Defense counsel ready?

18 MR. SCHECHTER: We're ready, your Honor.

19 THE COURT: Okay, good afternoon, prospective
20 members of our jury panel.

21 My name is Judge McCormack. You are now in
22 the Nassau County Court. I understand that you just
23 left central jury in Supreme Court.

24 We're about to begin the selection of a jury
25 in a criminal case. I'm going to tell you a little bit

1 about the case in a moment and get into your roles,
2 should you be selected as jurors in this particular
3 case.

4 But before I do that I need to have my clerk
5 swear everybody in, so if you would just kindly rise
6 and give your attention to my clerk?

7 (Panel of prospective jurors duly sworn as to
8 their qualifications.)

9 THE COURT: Okay, have a seat, everybody.

10 For those of you that are seated in the jury
11 box, I have some good news. The fact that you're
12 seated there doesn't mean that you've already been
13 picked as the jury in this case. I wish it was that
14 easy, but it's not.

15 As I indicated to you, prospective members,
16 you're in the County Court.

17 My name is Judge McCormack. Judge Sullivan,
18 this is his courtroom. He's been kind enough to allow
19 us to use it. As you can tell, we barely fit enough
20 prospective jurors for us to really kind of get through
21 a couple of panels in terms of jury selection, so
22 that's why we're here. My courtroom is down the hall.

23 We've just -- we're just beginning, if you
24 will, the jury selection in this case so I just want to
25 just tell you at the outset that all of you that are

1 here will be here for this afternoon and I feel very
2 confident that you'll all be back or some of you will
3 be back with me tomorrow. As I indicated, we just
4 began jury selection right now.

5 As I indicated, this is a criminal case. The
6 title of the action is the People of the State of New
7 York against Harold Gopaul.

8 The charges in this case are sexual abuse in
9 the first degree. It is alleged that between May of
10 2008 and June of 2008, that the defendant had engaged
11 in sexual conduct by forcible compulsion with Sana
12 Awan.

13 Now, the fact -- what I'm reading from is an
14 indictment and an indictment is only the means by which
15 a felony case is tried in the State of New York.

16 The fact that I'm referring to an indictment,
17 the fact that there is an indictment that is filed, has
18 no evidentiary value whatsoever. It doesn't mean the
19 defendant is guilty or not guilty and you're not to
20 consider the fact that an indictment has been filed as
21 any inference negative or otherwise with respect to the
22 defendant.

23 It's anticipated that this trial is going to
24 last approximately two weeks. By that I mean it's
25 probably going to conclude May 22nd, which is two weeks

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1 from this Friday.

2 What I'm going to do at this point is
3 introduce the parties in this case that will be trying
4 this case and defendant himself.

5 Seated at the first table to my immediate
6 right is Ms. Jamie Johnson --

7 MS. JOHNSON: Good afternoon, everyone.

8 THE COURT: -- from the Nassau County
9 District Attorney's Office. She's an Assistant
10 District Attorney representing the office of Ms.
11 Kathleen Rice.

12 Seated at the next table to my far right is
13 Mr. Harold Gopaul.

14 THE DEFENDANT: Good afternoon.

15 THE COURT: And seated next to Mr. Gopaul is
16 his attorney, Donald Schechter.

17 MR. SCHECHTER: Good afternoon.

18 THE COURT: Now, I've told you a little bit
19 about the nature of the case and the length of the
20 case.

21 What I'm going to do at this point is I want
22 to conduct, if you will, a pre-screening and I want you
23 to listen carefully to what I'm about to say.

24 I told you the case is going to last
25 approximately two weeks, to May 22nd.

1 Just keep in mind the following:

2 We typically will try cases between somewhere
3 in the range of 10 o'clock, 10:30, we usually try to
4 break by 4:30 or as close thereto as possible.

5 I do have a regular calendar every day, so
6 sometimes my start times may not be as predictable, if
7 you will, as you may like, but I try to do my best to
8 start the case at the time that I tell you to be here
9 and every day, if you're selected as a juror in this
10 case, you know, the times may change but, as I
11 indicated, I try to be as close to the time as
12 possible.

13 One thing to keep in mind, there is no longer
14 any sequestration in the State of New York, so nobody
15 has to be concerned about the fact that they're going
16 to be -- if you're selected as a juror and during your
17 deliberations you're unable -- or during the course of
18 your deliberations you're going to be sequestered in a
19 hotel somewhere. Everybody goes home every day,
20 whether during the trial as well as during
21 deliberations. I don't want anybody to be concerned
22 about that.

23 But what I'm going to ask is that if there's
24 anybody here, and I want to try to do this in as
25 orderly fashion as possible, has, in the next two

1 weeks, from now until May 22nd, either a planned
2 vacation or a business trip - and I've been known on
3 occasion to ask you for proof of that so I may ask you
4 to come back tomorrow morning and show me the plane
5 tickets or itinerary - any type of planned medical
6 procedure that you cannot reschedule, any issue with
7 regard to child care - keep in mind the hours I just
8 indicated that we would be sitting - or elder care for
9 that matter, anybody who takes care of an elderly
10 parent or loved one.

11 So, again, business trip, vacation planned,
12 any type of medical -- any type of medical procedure, I
13 should say, that's going to take place over the next
14 two weeks and any issue with regard to child care or
15 elder care.

16 Now, please, what I'm going to ask Kenny, if
17 you would, we'll do the -- what we'll do is we'll do
18 the jury box first and then we'll move to the back.

19 So the first row in the jury box right
20 directly in front of me, does anybody meet, and only
21 those people that would meet, that criteria?

22 (Discussion held at the bench, off the
23 record.)

24 THE COURT: You can come on up.

25 One thing, and I failed to point this out, if

1 you get excused from this case just please bear in mind
2 I cannot excuse you from jury duty, so I will be
3 directing you back to Central Jury. So just please
4 keep that in mind.

5 (Discussion held at the bench, off the
6 record.)

7 THE COURT: All right, that concludes our
8 pre-screening process.

9 And I don't mean to inconvenience those of
10 you that are in the box, but, as I indicated to you,
11 the fact that you're sitting there doesn't mean that
12 you've been selected as a juror, but what we are going
13 to do now is start to fill that box, so if I could
14 indulge you or you can indulge me, I should say, and if
15 you could just find a seat back out in the audience, I
16 would appreciate it.

17 Just watch your step, particularly those in
18 the second row, as you step off.

19 (Pause in the proceedings.)

20 THE COURT: All right, so, at this point what
21 we're going to do is we're going to fill the seats in
22 the jury box.

23 As you step into the box in the first row,
24 just go all the way to the back. That will be the
25 closest seat to where you prospective jurors are seated

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1 at this point and then with respect to the second row,
2 again, all the way to the back and, obviously, fill in
3 the seats as you go forward.

4 As your name is called, please just bring all
5 of your personal belongings with you. Don't leave
6 anything in your seats, okay?

7 THE CLERK: Seat 1, Eric Ross, R-o-s-s;
8 Seat 2, K.S. Mellish, M-e-l-l-i-s-h; Seat 3, Richard
9 Riley, R-i-l-e-y; Seat 4, Rena Cohen, C-o-h-e-n;
10 Seat 5, Frances Arroyo, A-r-r-o-y-o; Seat 6, Brian
11 Murray, M-u-r-r-a-y; Seat 7, Frank DeBenedittis,
12 D-e-B-e-n-e-d-i-t-t-i-s; Seat 8, Marilyn Garfinkel,
13 Garfinkel; Seat 9, Daisy Kohler, K-o-h-l-e-r; Seat 10,
14 Kelly Farina, F-a-r-i-n-a; Seat 11, Frank Mazza,
15 M-a-z-z-a; Seat 12, Maureen McHugh, M-c-H-u-g-h;
16 seat 13, Frederick Wu, W-u; Seat 14, Samuel Hoy, H-o-y.

17 THE COURT: Okay.

18 Could I just see both counsel very quickly
19 before we begin?

20 (Sidebar conference held as follows:)

21 THE COURT: I neglected to ask you about me
22 charging no adverse inference if your client decides --

23 MR. SCHECHTER: Yes.

24 THE COURT: You want me to do that?

25 MR. SCHECHTER: Yes.

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1 THE COURT: Okay.

2 (Sidebar conference concludes.)

3 THE COURT: Okay, prospective members of the
4 jury, again, thank you. Let me thank you for being
5 here this afternoon.

6 I've introduced the parties to the case who
7 are going to be trying this case and the defendant.

8 Does anybody here know either myself, the
9 Assistant DA, Mr. Schechter or Mr. Gopaul?

10 Anybody?

11 Okay, there's people that are going to be
12 involved in this case, prospective witnesses, who
13 obviously you're not going to hear from or see today,
14 but I just want to read -- at this time read their
15 names and again ask you the same question, if any of
16 the 14 -- let me just say, those of you that are seated
17 outside in the audience, if you will, I'm going to ask
18 you, although you're not in the box, as I indicated to
19 you we just began jury selection so more than likely if
20 not today, certainly by tomorrow you're going to be
21 seated in the jury box, so not only myself, but the
22 attorneys as well, this way when you get in the jury
23 box, you'll kind of have an idea of the process and
24 kind of questions that are going to be asked, so I
25 would ask you to listen to what's being said at this

1 time.

2 For those of you that are in the jury box at
3 this time, the following are the names of prospective
4 witnesses. It doesn't necessarily mean that they will
5 definitely testify, but they are names of either
6 witnesses you may hear or witnesses during the trial:
7 Sana Awan, A-w-a-n, Denise Alioto, A-l-i-o-t-o,
8 Christine Alioto, A-l-i-o-t-o, Detective Leonard
9 Shulman of the New York City Police Department, the
10 105th Squad, Police Officer Cecilia (sic) Alfaro of the
11 Police Department, 105th Precinct in Queens, Assistant
12 District Attorney Brian Hughes of the Queens County
13 DA's Office and Assistant District Attorney Jared
14 Rosenblatt, also of the Queens County DA's Office.

15 Does anybody either recognize those names,
16 heard of those people and if for any reason you do,
17 indicate by a show of hands?

18 Anybody?

19 Okay, seeing no hands I'm going to assume
20 nobody knows either myself, the attorneys or the
21 prospective witnesses in this case.

22 All right, I'm going to first give you an
23 overview of what your role will be as a juror if you're
24 selected in this case, what my role is going to be in
25 the case.

1 I'm going to go and explain, not in great
2 detail, but to some degree, certain principles of law
3 that you will -- that apply in any criminal case.

4 And at the close of that I'm going to ask all
5 of you if you could apply that law, regardless of your
6 personal belief or other considerations. In other
7 words, apply the law as I give it to you, both from now
8 what you're going to be hearing from me preliminarily,
9 as well as at the close of the case.

10 I'm then going to ask questions of you
11 individually. I will start in the manner in which you
12 were seated.

13 One thing I just want to keep in mind and
14 tell everybody, that we're not here to embarrass
15 anybody, to make anybody feel uncomfortable. I'm well
16 aware of the fact that you're sitting here in an open
17 courtroom amongst strangers. We're not looking to pry
18 into your personal lives. We are not looking for you
19 to reveal what you may feel is embarrassing
20 information.

21 If there's anything about either the
22 questions I ask or anything that the attorneys may ask
23 you that you feel you want to say in private, you have
24 that right and I would accord you that right. Just
25 tell us that and I will certainly make that available

1 to you. You can do it here privately with myself and
2 the attorneys and my court reporter, so please don't be
3 shy about that. I don't want anybody to feel that
4 because of this process they have to reveal things that
5 they may feel are of an uncomfortable nature, if you
6 will.

7 The other thing is that at the end of my
8 questioning of you then each of the attorneys will then
9 have an opportunity to question you as well as to your
10 qualifications as jurors.

11 At the end of that each of the attorneys will
12 then consider, if you will, their choices and make
13 whatever decisions they feel is appropriate for this
14 case.

15 So, having said that, let me just explain to
16 you what a trial, particularly in a criminal case, is
17 about.

18 A trial is the process which determines if
19 the defendant is guilty or not guilty of the charges
20 that I read to you or referred to you a moment ago.

21 In that process, those of you who are
22 selected as jurors and I as the judge perform separate
23 functions.

24 As jurors you are going to be called upon to
25 determine whether or not the evidence which you shall

1 hear and see in this case establishes the defendant's
2 guilt beyond a reasonable doubt.

3 In order to do this, at the end of the trial
4 you'll have to evaluate all the evidence and determine
5 what evidence that you have heard from the witnesses
6 and seen as exhibits is credible and what it means.
7 This is called finding the facts. That will be your
8 function alone. I will not find facts in this trial.

9 Your ultimate decision is called a verdict.
10 Your verdict will either be guilty or not guilty.

11 The attorneys here will present -- the
12 attorneys, I should say, will present the evidence,
13 usually by calling witnesses, and may suggest in their
14 closing arguments that you draw certain conclusions
15 from the evidence.

16 You are not bound by what the attorneys say.
17 Only you can decide what really happened and the
18 verdict as to each of the counts will remain your
19 decision alone.

20 As judge I make no determination of guilt or
21 lack of guilt. My role at trial is to insure that you
22 reach your verdict in accordance with the applicable
23 law as I will explain it to you.

24 In order for the People and the defendant to
25 receive a fair trial I may have to rule on questions

1 concerning the conduct of the trial. Those rulings
2 have nothing to do with whether the defendant is guilty
3 or not guilty.

4 I may also rule on questions concerning what
5 evidence you may consider and for what purpose.

6 When I make a ruling concerning whether you
7 may hear some testimony or see some exhibit which is
8 offered as evidence I will be ruling on whether or not
9 you are permitted to hear or see it as a matter of law.

10 Likewise, if I instruct you to disregard
11 something you might have heard I will do so because
12 that is the law.

13 None of my rulings should be taken by you as
14 any indication at all of whether you should believe all
15 or part of what is offered as evidence or that the
16 defendant is guilty or not guilty. That is solely for
17 you to determine.

18 You must accept the law as I give it to you
19 if the defendant and the People are to have the fair
20 trial to which they are entitled to.

21 You have heard my reference to the fact when
22 I read the charges in reference to an indictment.
23 This, too, is not and must not be taken as any evidence
24 of guilt. An indictment is simply a piece of paper by
25 which a defendant is accused of a crime.

1 Remember, the defendant is presumed innocent.
2 Only you, as members of the trial jury, will determine
3 whether the defendant is guilty or not guilty.

4 A number of you will not be selected to serve
5 on this case, but this is not a reflection on you,
6 either as a citizen or as a person. It is simply a
7 decision reached during the selection process that you
8 are not to sit on this particular case.

9 As I indicated, my role at the trial, the
10 role of any judge, is to help insure a fair and orderly
11 trial in accordance with our law. I will do that by
12 presiding over the trial, deciding questions of law
13 that may arise between and among the parties and
14 explain to you, the jury, as I am now, what the law is
15 and that the jury must accept the law as I give it.

16 Thus, we are both judges in this case, but
17 it's important to recognize that we judge different
18 things.

19 You, the jury, judge the facts of the case in
20 order to reach a verdict of guilty or not guilty and I
21 judge the law, meaning I decide questions of law and
22 instruct the jury on the law.

23 Again, as I indicated already, I do not
24 decide the facts. I do not decide whether the
25 defendant is guilty or not guilty.

1 Again, the reason for that is simple. Under
2 our law that is not my job, it is your job. You, the
3 jury, and you alone judge the facts and render a
4 verdict of guilty or not guilty.

5 If there is a verdict of guilty it is my
6 responsibility to impose an appropriate sentence.
7 Thus, in deciding whether the defendant is guilty or
8 not guilty you must not consider or speculate about
9 matters relating to sentence.

10 To decide the facts of this case you must
11 consider only the evidence presented in this case in
12 this courtroom. So it is important that you understand
13 what evidence is because that is what you base your
14 decision on and it is important to consider some things
15 that you will hear about that are not evidence because
16 you are not -- you do not base your decision on those
17 things.

18 First, what is evidence?

19 There are basically three types of evidence.

20 One, there is evidence that comes from a
21 stipulation of the parties. A stipulation is
22 information both the parties agree to present to the
23 jury as evidence without calling the witness to testify
24 to the information.

25 Two, there is evidence that comes from the

1 introduction into evidence of physical objects such as
2 documents, photographs, clothing or a chart.

3 Three, and finally, and the most common form
4 of evidence, is the testimony of people based on
5 questions asked by the lawyers and occasionally by the
6 Court.

7 What is not evidence?

8 First, the charges in this case that are set
9 forth in the document known as an indictment. The
10 indictment is simply a piece of paper that states the
11 charges. The defendant has pled not guilty to the
12 charges contained in the indictment and the trial is to
13 decide whether the defendant is guilty or not guilty.

14 Second, what the lawyers say at any time is
15 not evidence. The lawyers are not witnesses.

16 And what I say, for that matter, is not
17 evidence. I am not a witness.

18 Third, a question of a witness by a lawyer or
19 by the Court is, by itself, not evidence. It is the
20 question with the answer that is evidence, so you are
21 not to conclude from a question alone that anything
22 assumed in the question to be true is true, no matter
23 how detailed or specific the question is, nor are you
24 to draw any inference, either favorable or unfavorable
25 to either side, from the content of the question alone.

1 You must consider the question with the witness's
2 answer and decide whether you find the answer
3 believable and accurate. Because, again, it is the
4 question with the answer that is the evidence.

5 We now turn to some fundamental principles of
6 our law that apply in all criminal trials; the
7 presumption of innocence, the burden of proof and the
8 requirement of proof beyond a reasonable doubt.

9 Throughout these proceedings the defendant is
10 presumed to be innocent. As a result, you must find
11 the defendant not guilty unless, on the evidence
12 presented at this trial, you conclude that the People
13 have proven the defendant guilty beyond a reasonable
14 doubt.

15 Also, the fact that a defendant does not
16 testify as a witness is not a factor from which any
17 inference unfavorable to the defendant may be drawn. A
18 defendant is not required to prove that he is not
19 guilty. In fact, a defendant is not required to prove
20 or disprove anything.

21 To the contrary, the People have the burden
22 of proving the defendant guilty beyond a reasonable
23 doubt.

24 That means before you could find the
25 defendant guilty of a crime the People must prove

1 beyond a reasonable doubt every element of the crime,
2 including the -- including that the defendant is the
3 person who committed that crime.

4 The burden of proof never shifts from the
5 People to the defendant. If the People fail to satisfy
6 their burden of proof you must find the defendant not
7 guilty.

8 If the People satisfy their burden of proof
9 you must find the defendant guilty.

10 What does our law mean when it requires proof
11 of guilt beyond a reasonable doubt?

12 The law uses the term proof beyond a
13 reasonable doubt to tell you how convincing the
14 evidence of guilt must be to permit a verdict of
15 guilty.

16 The law recognizes that in dealing with human
17 affairs there are very few things in this world that we
18 know with absolute certainty.

19 Therefore, the law does not require the
20 People to prove a defendant guilty beyond all possible
21 doubt.

22 On the other hand, it is not sufficient to
23 prove that the defendant is probably guilty. In a
24 criminal case the proof of guilt must be stronger than
25 that, it must be beyond a reasonable doubt.

1 A reasonable doubt is an honest doubt of the
2 defendant's guilt for which a reason exists based upon
3 the nature and quality of the evidence. It is an
4 actual doubt, not an imaginary doubt. It is a doubt
5 that a reasonable person, acting in a matter of this
6 importance, would be likely to entertain because of the
7 evidence or because of the lack of evidence.

8 Proof beyond a reasonable doubt is proof that
9 leaves you so firmly convinced of the defendant's guilt
10 that you have no reasonable doubt of the existence of
11 any element of the crime or of the defendant's identity
12 as to the person who committed the crime.

13 In determining whether or not the People have
14 proven the defendant's guilt beyond a reasonable doubt
15 you should be guided solely by a full and fair
16 evaluation of the evidence.

17 If -- after carefully evaluating the evidence
18 each of you must decide whether or not that evidence
19 convinces you beyond a reasonable doubt of the
20 defendant's guilt.

21 Whatever your verdict may be, it must not
22 rest on baseless speculation or by prejudice, sympathy
23 or a desire to bring an end to your deliberations or to
24 avoid an unpleasant duty.

25 If you are not convinced beyond a reasonable

1 doubt that the defendant is guilty of a charged crime,
2 you must find defendant not guilty of that crime.

3 If you are convinced beyond a reasonable
4 doubt that the defendant is guilty of a charged crime
5 you must find the defendant guilty of that crime.

6 As judges of the facts you alone determine
7 the truthfulness of the testimony of each witness. You
8 must decide whether a witness told the truth and was
9 accurate or, instead, testified falsely or was
10 mistaken.

11 You must also decide what importance to give
12 to the testimony you accept as truthful and accurate.
13 It is the quality of the testimony that is controlling,
14 not the number of witnesses who testify.

15 Now, there is no particular formula for
16 evaluating the truthfulness and accuracy of another
17 person person's statements or testimony. You bring to
18 this process all of your varied life experiences.

19 In life you frequently decide the
20 truthfulness and accuracy of statements made to you by
21 other people. The same factors used to make those
22 decisions should be used in this case when evaluating
23 the testimony.

24 At the end of the trial I will give you some
25 examples of those factors.

1 As I indicated from a reading of the
2 witness -- prospective witness list, in this case you
3 will obviously hear testimony by the police officers or
4 detectives.

5 The testimony of a witness should not be
6 believed solely and simply because the witness is a
7 police officer or a detective.

8 At the same time, a witness's testimony
9 should not be disbelieved solely and simply because the
10 witness is a police officer or detective.

11 In other words, you must not believe or
12 disbelieve a police officer or detective just because
13 he or she is a police officer or detective.

14 You must listen to a police officer or
15 detective's testimony just like you would listen to any
16 other witness and you must evaluate a police officer
17 and/or detective's testimony for truthfulness and
18 accuracy in the same way you would evaluate the
19 testimony of any other witness.

20 Just addressing myself to those of you
21 sitting in the first row in front of me, Seats 1
22 through 7, does anybody here in the front -- first
23 front row here, would anybody have any problem in
24 following those basic principles of law that I've just
25 given, presumption of innocence, burden of proof?

Proceedings

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1 Anybody have any problems with that?

2 Police testimony?

3 As I indicated to you, in this trial, in any
4 criminal trial, we need jurors who can make a decision,
5 either guilty or not guilty.

6 Does anybody here in the first row, either
7 for religious reasons or personal reasons, feel that
8 they could not do that?

9 And, again, I'm just talking about the first
10 row.

11 In the second row, with regard to the
12 principles of law that I just discussed with you,
13 burden of proof, presumption of innocence, proof beyond
14 a reasonable doubt, anybody in that second row have any
15 problems in following that?

16 Yes?

17 PROSPECTIVE JUROR: In my religion we don't
18 accept killing, as a Jewish religion.

19 THE COURT: I don't think that's going to be
20 an issue in this case.

21 Is there anything else?

22 MR. SCHECHTER: Friday night?

23 Friday sabbath?

24 THE COURT: Does anybody have any religious
25 obligations Friday evening?

Proceedings

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1 Ma'am?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: You would?

4 PROSPECTIVE JUROR: Yeah.

5 THE COURT: I'll keep that in mind.

6 Anybody else in the second row with regard to
7 the principles of law?

8 Anybody for any personal or religious reasons
9 would not be able to either come to a determination of
10 either guilty or not guilty?

11 No?

12 All right, all right, what I'm going to do at
13 this point is -- and, again, I'm going to address each
14 of you individually. If I -- and, again, as I said
15 about not being shy about asking to approach about
16 something you're uncomfortable talking about publicly,
17 if there's anything -- if there's any -- if I should
18 mispronounce your name, please, correct me, because
19 you'll be doing the lawyers a great favor by correcting
20 me first because this way when they get up there
21 they'll know how to pronounce and if they don't, that
22 means they weren't paying attention, so.

23 What I'm going to do is you give the
24 neighborhood in which you live - you do not have to
25 give me your home address, the neighborhood in which

1 you live - your marital status or if you're in a
2 committed relationship, if you have any children and,
3 if your children are old enough, if they're employed,
4 what kind of work that they do and then I'm going to
5 ask you some further questions about any prior jury
6 service, criminal, civil, state, federal.

7 I'm going to ask you whether or not any
8 member of your family has worked in law enforcement,
9 either for the police, District Attorneys or for the
10 court system.

11 I will also ask you whether or not anyone,
12 either yourself or a loved one, has been the victim of
13 a crime or anyone in your family who's been accused or
14 convicted of a crime.

15 So what I'm going to do is start with you,
16 Mr. Ross.

17 Could you just tell me the neighborhood in
18 which you live?

19 PROSPECTIVE JUROR: Great Neck.

20 THE COURT: Married or committed
21 relationship?

22 PROSPECTIVE JUROR: Married.

23 THE COURT: Are you currently working?

24 PROSPECTIVE JUROR: No, I'm not.

25 THE COURT: Are you retired?

Proceedings

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1 PROSPECTIVE JUROR: Yes, I am.

2 THE COURT: What kind of work did you do
3 before you retired?

4 PROSPECTIVE JUROR: Systems analyst.

5 THE COURT: Married or committed
6 relationship?

7 PROSPECTIVE JUROR: You asked me if I was
8 married, yes.

9 THE COURT: Any children?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: How many?

12 PROSPECTIVE JUROR: Four.

13 THE COURT: Their ages, if you know?

14 PROSPECTIVE JUROR: Thirty-six, 32, 28 and
15 26.

16 THE COURT: Okay, and their occupations, if
17 they're currently --

18 PROSPECTIVE JUROR: I have -- my daughter --
19 one daughter is a teacher, one daughter sells real
20 estate, another -- my oldest son works for a truck
21 company in the sales department and my younger son
22 works for a lighting company out on the island.

23 THE COURT: And you said you were married, am
24 I right?

25 PROSPECTIVE JUROR: Yes.

WS

Proceedings

41

1 THE COURT: Does your wife currently work?

2 PROSPECTIVE JUROR: She's also retired.

3 THE COURT: What was her occupation?

4 PROSPECTIVE JUROR: Teacher.

5 THE COURT: Very good.

6 Mr. Mellish?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: The town in which you live in,
9 sir?

10 PROSPECTIVE JUROR: Plainview.

11 THE COURT: Married or committed
12 relationship?

13 PROSPECTIVE JUROR: Single.

14 THE COURT: Working currently?

15 PROSPECTIVE JUROR: Waldbaums, doing stock at
16 Waldbaums.

17 THE COURT: Mr. Riley?

18 Thank you, Mr. Mellish.

19 Town in which you live, sir?

20 PROSPECTIVE JUROR: Malverne.

21 THE COURT: Married or committed
22 relationship?

23 PROSPECTIVE JUROR: Single.

24 THE COURT: Children?

25 PROSPECTIVE JUROR: Two.

Proceedings

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1 THE COURT: How old?

2 PROSPECTIVE JUROR: Thirty-one and 29.

3 THE COURT: Are they currently working?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: What do they do?

6 PROSPECTIVE JUROR: My daughter is a garment
7 center executive and my son is a mechanic.

8 THE COURT: Mr. -- Ms. Cohen, I should say?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Town in which you live, ma'am?

11 PROSPECTIVE JUROR: I live in East Meadow.

12 THE COURT: Married or committed
13 relationship?

14 PROSPECTIVE JUROR: No, single.

15 THE COURT: Okay, children?

16 PROSPECTIVE JUROR: I have one grown
17 daughter. She's an assistant teacher in Queens.

18 THE COURT: Okay. All right, thank you.
19 Mr. Arroyo?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Town in which you live, sir?

22 PROSPECTIVE JUROR: Syosset.

23 THE COURT: Married or committed
24 relationship?

25 PROSPECTIVE JUROR: Married.

Proceedings

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1 THE COURT: Children?

2 PROSPECTIVE JUROR: Three.

3 THE COURT: How old, about?

4 PROSPECTIVE JUROR: Twenty-three, 26 and 28.

5 THE COURT: And their occupations, if any?

6 PROSPECTIVE JUROR: I work at the Bank of New
7 York, administer.

8 THE COURT: You work there?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: And your wife, is she currently
11 working?

12 PROSPECTIVE JUROR: No, she's retired. She
13 substitutes as a teacher. She was a teacher.

14 THE COURT: Any of your children working?

15 PROSPECTIVE JUROR: My son is a pharmacist.
16 My oldest daughter is -- works for a doctor in an
17 office and my youngest is at Hofstra Law School.

18 THE COURT: All right, thank you.

19 Mr. Murray, town in which you live, sir?

20 PROSPECTIVE JUROR: Baldwin.

21 THE COURT: Married or committed
22 relationship?

23 PROSPECTIVE JUROR: Married.

24 THE COURT: Children?

25 PROSPECTIVE JUROR: Five children.

Proceedings

44

1 THE COURT: Are you currently working?

2 PROSPECTIVE JUROR: I just became unemployed.

3 THE COURT: What kind of work did you do?

4 PROSPECTIVE JUROR: Construction supervisor,
5 interior renovations.

6 THE COURT: For how many years did you do
7 that?

8 PROSPECTIVE JUROR: Twenty-eight years.

9 THE COURT: Your wife, is she working?

10 PROSPECTIVE JUROR: Yes, she's a registered
11 nurse at South Nassau.

12 THE COURT: Are your children old enough to
13 be working?

14 PROSPECTIVE JUROR: Oh, yeah -- yes, 29, 27,
15 21, 14 and 11.

16 THE COURT: Okay. And the oldest one?

17 PROSPECTIVE JUROR: He's a telecommunications
18 tech and my second son, Timothy, is executive chef at
19 the Merchants Marine Academy, Kings Point.

20 THE COURT: Mr., is it, Wu -- I went to 13.
21 Should have went to 7.

22 Mr. DeBenedittis, in what town do you live?

23 PROSPECTIVE JUROR: Syosset.

24 THE COURT: Married or committed
25 relationship?

Proceedings

45

1 PROSPECTIVE JUROR: No.

2 THE COURT: Working?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Okay, when was the last time you
5 worked?

6 PROSPECTIVE JUROR: Last summer.

7 THE COURT: Going to school at all?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: What kind of school?

10 PROSPECTIVE JUROR: Fordham University.

11 THE COURT: What year are you in?

12 PROSPECTIVE JUROR: Entering senior year,
13 just finished junior.

14 THE COURT: You picked a major by now?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: What is that?

17 PROSPECTIVE JUROR: Finance.

18 THE COURT: Ms. Garfinkel, town in which you
19 live?

20 PROSPECTIVE JUROR: Plainview.

21 THE COURT: Married or committed
22 relationship?

23 PROSPECTIVE JUROR: Married.

24 THE COURT: Children?

25 PROSPECTIVE JUROR: Two, 25 and 21.

Proceedings

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1 THE COURT: Okay, are you currently working?

2 PROSPECTIVE JUROR: I am.

3 THE COURT: What kind of work you do?

4 PROSPECTIVE JUROR: Servicing credit cards.

5 THE COURT: And is your husband currently
6 working?

7 PROSPECTIVE JUROR: He's an accountant.

8 THE COURT: And your children, are they
9 working?

10 PROSPECTIVE JUROR: My daughter is graduating
11 to be a teacher, she's a student right now, and my son
12 does a part-time training, physical training.

13 THE COURT: Okay. All right.

14 Ms. Kohler?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Town in which you live?

17 PROSPECTIVE JUROR: Great Neck.

18 THE COURT: Okay, Great neck is well
19 represented on this panel.

20 Married or committed relationship?

21 PROSPECTIVE JUROR: Married.

22 THE COURT: Are you currently working?

23 PROSPECTIVE JUROR: Yes, self-employed.

24 THE COURT: What kind of work do you do?

25 PROSPECTIVE JUROR: Jewelry manufacturer.

Proceedings

47

1 THE COURT: Okay, and your husband, is he
2 working?

3 PROSPECTIVE JUROR: Yes, also jewelry
4 manufacturing.

5 THE COURT: Is that a business you have
6 together?

7 PROSPECTIVE JUROR: No, separate.

8 THE COURT: Children?

9 PROSPECTIVE JUROR: Two.

10 THE COURT: And --

11 PROSPECTIVE JUROR: My son is 42, my daughter
12 38.

13 THE COURT: And either one of them working?

14 PROSPECTIVE JUROR: Yeah.

15 THE COURT: What kind of work do they do?

16 PROSPECTIVE JUROR: My son is director of
17 Deutsche Bank and my daughter is psychologist, school
18 psychologist.

19 THE COURT: Okay, thank you.

20 Ms. Farina, town in which you live?

21 PROSPECTIVE JUROR: Massapequa.

22 THE COURT: Married or committed
23 relationship?

24 PROSPECTIVE JUROR: Single.

25 THE COURT: Currently working?

Proceedings

48

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: What kind of work do you do?

3 PROSPECTIVE JUROR: I do sales for State Farm
4 insurance.

5 THE COURT: Okay, how long have you been
6 doing that for?

7 PROSPECTIVE JUROR: Twenty years.

8 THE COURT: Okay, thank you.

9 Mr. Mazza, county in which you live?

10 PROSPECTIVE JUROR: Seaford.

11 THE COURT: Married?

12 PROSPECTIVE JUROR: Single.

13 THE COURT: Are you currently working?

14 PROSPECTIVE JUROR: Unemployed.

15 THE COURT: And when you were working what
16 kind of work did you do?

17 PROSPECTIVE JUROR: Insurance adjustor.

18 THE COURT: For an insurance company?

19 PROSPECTIVE JUROR: General Motors.

20 THE COURT: Okay. All right, thank you,
21 Mr. Mazza.

22 Ms. McHugh, town in which you live?

23 PROSPECTIVE JUROR: New Hyde Park.

24 THE COURT: Currently working?

25 PROSPECTIVE JUROR: Yes.

Proceedings

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1 THE COURT: What kind of work you do?

2 PROSPECTIVE JUROR: I'm a teacher's aide in a
3 kindergarten classroom.

4 THE COURT: Okay, and your husband's
5 occupation?

6 PROSPECTIVE JUROR: He's a foreman in a labor
7 union.

8 THE COURT: Children?

9 PROSPECTIVE JUROR: Four.

10 THE COURT: Their ages?

11 PROSPECTIVE JUROR: Twenty, 19, 16 and 14.

12 THE COURT: I take it -- the 20 and
13 19-year-old working?

14 PROSPECTIVE JUROR: No, two full-time
15 college, two full-time high school.

16 THE COURT: Now I got it.

17 Mr. Wu, town in which you live?

18 PROSPECTIVE JUROR: Syosett.

19 THE COURT: Married, committed relationship?

20 PROSPECTIVE JUROR: Yeah.

21 THE COURT: Yeah to which, both? I got ya.

22 We'll let you get out of this one.

23 I'm assuming it's the first one, married?

24 PROSPECTIVE JUROR: Yeah.

25 THE COURT: Okay, any children?

Proceedings

50

1 PROSPECTIVE JUROR: Yeah, two.

2 THE COURT: Are you currently working?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: What kind of work do you do?

5 PROSPECTIVE JUROR: Computer programmer.

6 THE COURT: Okay, and your wife, what does
7 she do?

8 PROSPECTIVE JUROR: She works in a trading
9 company as accountant.

10 THE COURT: And children, if you have any?

11 PROSPECTIVE JUROR: Yeah, 17 and 14.

12 THE COURT: And they're, I take it, in
13 school?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: And, finally, Mr. Hoy?

16 PROSPECTIVE JUROR: First of all, my last
17 name totally wrong.

18 THE COURT: Okay, is it Ip?

19 PROSPECTIVE JUROR: Yes. I adjusted it today
20 because the Hoy is my middle name, but they put both
21 Hoy.

22 THE COURT: Yeah, they have Hoy Hoy and one
23 Hoy is scratched out and they put Ip in.

24 Town in which you live, sir?

25 PROSPECTIVE JUROR: Elmont.

Proceedings

51

1 THE COURT: Married?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: What kind of work do you do, if
4 you work?

5 PROSPECTIVE JUROR: I'm retired.

6 THE COURT: What did you do when you were
7 working?

8 PROSPECTIVE JUROR: Carpenter.

9 THE COURT: And is your wife currently
10 working?

11 PROSPECTIVE JUROR: Housewife.

12 THE COURT: Okay, children?

13 PROSPECTIVE JUROR: Three.

14 THE COURT: How old?

15 PROSPECTIVE JUROR: Thirty-nine, 37 and 33.

16 THE COURT: And are they currently working?

17 PROSPECTIVE JUROR: Yeah, they are working.

18 THE COURT: What kind of work do they do?

19 PROSPECTIVE JUROR: My older son is chemical
20 engineer and the younger son work in JP Morgan --
21 JP Chase, I think -- Morgan Chase.

22 THE COURT: Okay, JP Morgan Chase, all right.

23 THE WITNESS: My daughter is just married and
24 stay home.

25 THE COURT: Okay, all right.

Proceedings

52

1 All right, at this time what I'm going to do
2 is I'm just going to go kind of row by row, if you
3 will.

4 The first thing I want to do is ask the
5 people in the first row have either -- any of you, I
6 should say, ever been selected to serve on -- as a
7 juror in either a criminal or civil case, either in the
8 state court system or the federal court system or --
9 and, perhaps, any service in the grand jury, either in
10 state or federal?

11 Anybody in the first row?

12 Mr. Murray?

13 PROSPECTIVE JUROR: Civil case, about six
14 years ago.

15 THE COURT: Okay, did it go to verdict?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: What kind of case, if you
18 remember?

19 PROSPECTIVE JUROR: It was a real -- a
20 gentleman that rented -- leased a gas station that was
21 contaminated and they brought in specialty people as
22 far as the environmentalists were there, the whole
23 schpiel, very interesting.

24 THE COURT: As opposed to a criminal case,
25 you heard me talk before about burden of proof, in a

1 criminal case it's proof beyond a reasonable doubt.
2 Civil case, generally, although with a couple of
3 exceptions, it's usually by a preponderance of the
4 evidence. It's a much lesser, if you will, burden of
5 proof.

6 I'm going to assume that you don't remember
7 what, perhaps, the judge said in the civil case, but
8 can you give me your assurance that whatever law,
9 including the burden of proof, that I give in this case
10 you'll follow?

11 PROSPECTIVE JUROR: Absolutely.

12 THE COURT: Anybody else prior jury -- just
13 the first row. I'm going to get to you back there.
14 Just in the first row.

15 Ms. Cohen?

16 PROSPECTIVE JUROR: A drug case in Queens
17 when I lived there going back over 20 years. That's
18 the only time.

19 THE COURT: And without telling us what the
20 verdict is, did the jury reach a verdict?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: And you were -- were you a sworn
23 juror or an alternate?

24 PROSPECTIVE JUROR: A sworn juror.

25 THE COURT: Okay, anything about that

1 experience that you couldn't serve as a juror in a
2 criminal case again?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Okay.

5 Anybody else in that first row?

6 Mr. Riley?

7 PROSPECTIVE JUROR: Criminal case, at least
8 20 years ago.

9 THE COURT: Okay, remember what the nature of
10 the charges were?

11 PROSPECTIVE JUROR: I think it was assault,
12 but I'm not entirely certain.

13 THE COURT: Again, the same question I had
14 for Ms. Cohen.

15 Anything about that service that you feel you
16 couldn't be a juror in a criminal case again?

17 PROSPECTIVE JUROR: No.

18 THE COURT: And you were a sworn juror as
19 opposed to an alternate?

20 PROSPECTIVE JUROR: I was a sworn juror.

21 THE COURT: When I say sworn I mean one of
22 the 12.

23 Anybody else in the first row?

24 No?

25 Second row, prior jury service, criminal,

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1 civil, state or federal or grand jury?

2 Ms. Garfinkel?

3 PROSPECTIVE JUROR: It was about 32 years
4 ago. I was on a murder case.

5 THE COURT: And you were one of the 12?

6 PROSPECTIVE JUROR: Foreperson.

7 THE COURT: Okay, without telling us what the
8 verdict is, did you reach a verdict?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Okay, so it was, shall we say, a
11 hung jury?

12 PROSPECTIVE JUROR: Mistrial.

13 THE COURT: Okay. Anything about that
14 experience that you feel you couldn't or wouldn't serve
15 as a juror in a criminal case again?

16 PROSPECTIVE JUROR: No.

17 THE COURT: And the fact that the jury was
18 not able to come to a unanimous decision would not
19 affect you in serving as a juror in this case if you're
20 selected?

21 No?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Ms. Kohler.

24 PROSPECTIVE JUROR: Yeah, I serve, but --

25 THE COURT: You could sit down.

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1 PROSPECTIVE JUROR: I serve, but I was not
2 selected as a juror, six years ago in this building.

3 THE COURT: In other words, you were summoned
4 as everybody is right now?

5 PROSPECTIVE JUROR: Yeah.

6 THE COURT: But you were not picked?

7 PROSPECTIVE JUROR: I was not picked, no.

8 THE COURT: Okay.

9 Any other experiences as a juror, Ms. Kohler?

10 No, just that one?

11 PROSPECTIVE JUROR: Just that.

12 THE COURT: Anybody else in the second row
13 prior jury service?

14 No?

15 Okay.

16 All right, again, going back to the first
17 row, any member -- any immediate member of your family,
18 close personal friend, who's ever worked for the Police
19 Department, the District Attorney's Office or the court
20 system, first row?

21 Anybody?

22 Mr. DeBenedittis?

23 PROSPECTIVE JUROR: My uncle is a cop, Queens
24 North task force.

25 THE COURT: This is somebody that you have

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1 frequent contact with?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Does he -- is it a man or woman?

4 PROSPECTIVE JUROR: Man.

5 THE COURT: Does he discuss his work with you
6 often?

7 PROSPECTIVE JUROR: Not particularly.

8 THE COURT: Okay. Does your relationship --
9 would your relationship with your uncle in any way
10 affect your ability to serve as a juror in this case?

11 By that I mean would you be able to follow
12 the instruction I gave earlier that you're going to
13 treat a police officer or detective just like anybody
14 else?

15 PROSPECTIVE JUROR: Shouldn't be a problem.

16 THE COURT: Okay. You won't give them any
17 more credibility or any less credible just because of
18 what their job is?

19 PROSPECTIVE JUROR: Correct.

20 THE COURT: Anybody else in the first row?
21 Anybody else?

22 Okay, any police officers, DAs?

23 How about the second row?

24 Ms. Farina?

25 PROSPECTIVE JUROR: My cousin is a retired

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1 police officer. He just retired.

2 THE COURT: From where?

3 PROSPECTIVE JUROR: Somewhere in New York. I
4 don't know where. Somewhere -- I think in Queens
5 somewhere.

6 THE COURT: All right, you heard me ask
7 Mr. DeBenedittis, is there anything about your
8 relationship with that person that you would not be
9 able to evaluate a police officer or detective like
10 anybody else?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Ms. McHugh?

13 PROSPECTIVE JUROR: Yeah, I have an uncle who
14 is a police officer, my brother-in-law just retired
15 from the Police Department in New York and I have a
16 family friend that I've always considered Uncle Tom
17 that's the DA, Tom Spoder, in Suffolk County.

18 THE COURT: All right.

19 PROSPECTIVE JUROR: I don't think it would
20 affect me at all, but --

21 THE COURT: All right, and, you know, make no
22 mistake about it, there's going to be police officers
23 and detectives that are going to get called.

24 So, again, would you be able to evaluate them
25 just like anybody else?

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1 PROSPECTIVE JUROR: Yes.

2 THE COURT: No greater weight, no lesser
3 weight?

4 PROSPECTIVE JUROR: Absolutely not.

5 THE COURT: Police officers can tell the
6 truth.

7 PROSPECTIVE JUROR: Yeah.

8 THE COURT: Police officers can be mistaken
9 or police officers can lie.

10 Any problem with that?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Okay.

13 Anybody else in that second row?

14 Again, going back to the first row, anybody
15 in the first row, yourself, close family member, loved
16 one, been the victim of a crime?

17 Victim of a crime?

18 Nobody?

19 How about the second row?

20 Ms. McHugh?

21 PROSPECTIVE JUROR: I was mugged in New York
22 City.

23 THE COURT: How long ago?

24 PROSPECTIVE JUROR: About 20 years ago.

25 THE COURT: Was there an arrest made as a

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1 result of it?

2 PROSPECTIVE JUROR: No, I wish there was,
3 but --

4 THE COURT: Did you have dealings with the
5 police?

6 PROSPECTIVE JUROR: Yeah, they came after the
7 fact.

8 THE COURT: Okay, anything about your
9 dealings with the police or the fact that somebody
10 wasn't arrested --

11 PROSPECTIVE JUROR: No.

12 THE COURT: -- that would have an effect on
13 you as a juror in this case?

14 PROSPECTIVE JUROR: It wasn't anybody's
15 fault.

16 THE COURT: Anything else other than that
17 incident?

18 Mr. Ip?

19 PROSPECTIVE JUROR: My son was robbed for his
20 bicycle about 20 years ago.

21 THE COURT: Where did that take place?

22 PROSPECTIVE JUROR: In Jamaica.

23 THE COURT: Did you have any dealings with
24 the police at that time?

25 PROSPECTIVE JUROR: I call the police, but

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1 nothing happened.

2 THE COURT: So police report was made, but
3 there was no arrest, nothing further came out of it?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Anything about that that you feel
6 you couldn't serve as a juror in this case?

7 PROSPECTIVE JUROR: No.

8 THE COURT: No?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Ms. Kohler?

11 PROSPECTIVE JUROR: Yes, my brother-in-law,
12 he was robbed and killed and, as I mentioned before,
13 they caught the thief, the criminal, and they put him
14 in jail five years and one of my brother-in-law, they
15 were working together, he had to run out from New York
16 to California not to recognize him because he has
17 recognized the person.

18 THE COURT: Okay, would that experience,
19 knowing what you know about this case and I explained
20 to you before when you were at the bench what the
21 nature of the charges here, anything about that case
22 that you feel you couldn't serve as a juror in this
23 case? ?

24 You'll be able to give both the People and
25 the defendant a fair trial?

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1 PROSPECTIVE JUROR: I doubt it.

2 THE COURT: You doubt it?

3 PROSPECTIVE JUROR: Yeah. I be honest.

4 THE COURT: Okay.

5 Ms. McHugh?

6 PROSPECTIVE JUROR: You had said if it
7 happened to us.

8 Do you want to know if it happened to our
9 family as well?

10 THE COURT: I said you, family member, close
11 personal friend.

12 PROSPECTIVE JUROR: My son, actually not even
13 quite a year ago, he was assaulted in the State of
14 Maryland and we went to trial and two people were
15 arrested and it went to trial and the whole nine yards.

16 THE COURT: I'm sorry, you said it was your
17 son?

18 PROSPECTIVE JUROR: My son.

19 THE COURT: This was how long ago?

20 PROSPECTIVE JUROR: Not even a year ago. He
21 was assaulted over a year ago, but it went to trial
22 about 11 months ago.

23 THE COURT: Do you have, as you sit there
24 now -- obviously, this case was prosecuted. There's a
25 prosecutor here in this case that's going to be

1 presenting evidence on behalf of the People of the
2 State of New York.

3 As you sit there do you feel that you could
4 give both sides -- do you feel that both sides are on a
5 level playing field, that you could be fair and
6 impartial to both, that you could hear what both sides
7 have to say?

8 PROSPECTIVE JUROR: Now that I think about
9 it, I think it would be difficult for me.

10 THE COURT: You think you would not be able
11 to?

12 PROSPECTIVE JUROR: I'm questioning myself.

13 THE COURT: Okay, anybody else in that second
14 row, victim of a crime?

15 Moving on, and sometimes this is the question
16 that triggers people to say, "I would like to
17 approach," have you personally or any member of your
18 family been accused or convicted of a crime?

19 First row?

20 No?

21 Second row?

22 Okay. I just want to see both lawyers real
23 quick before we go any further.

24 (Discussion held at the bench, off the
25 record.)

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1 THE COURT: What I would prefer to do, does
2 either one of you have any objection, is replace
3 Ms. McHugh, replace Ms. Kohler, and we'll put some
4 fresh people in there?

5 MS. JOHNSON: No objection to that.

6 MR. SCHECHTER: No objection to that.

7 THE COURT: All right, Ms. Kohler and
8 Ms. McHugh, with the thanks of both counsel and the
9 Court you'll be excused at this time.

10 Please just follow my -- the instructions
11 from my sergeant. Please be careful as you come out of
12 the jury box there.

13 (Prospective jurors excused.)

14 THE COURT: All right, fill seat Number 9 and
15 12.

16 THE CLERK: Seat 9, Gem Lilley, L-i-l-l-e-y,
17 G-e-m; Seat 12, Dawn Steiert, S-t-e-i-e-r-t.

18 THE COURT: All right, Ms. Lilley and
19 Ms. Steiert, welcome to the jury box.

20 Let me ask -- I'm just going to address
21 myself to both of you.

22 You heard me just a moment ago talk about
23 basic principles of law in any criminal case; the
24 burden of proof, that it's always on the People and
25 never shifts to the defendant, proof of guilt beyond a

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1 reasonable doubt, that a defendant does not have to
2 prove himself innocent, if you will, he has no burden
3 of proof, that he's presumed to be innocent throughout
4 the course of the case.

5 You heard me talk about evaluating witnesses'
6 credibility, just like you would anybody else that you
7 come in contact with in your everyday lives.

8 You also heard me talk about police officers,
9 that they are to get no greater or lesser credibility
10 because they are a police officer or a detective.

11 Do either of you -- would either of you,
12 either Ms. Lilley or Ms. Steiert, have any problem with
13 that?

14 Ms. Lilley?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Ms. Steiert?

17 PROSPECTIVE JUROR: No.

18 THE COURT: You seem to hesitate.

19 PROSPECTIVE JUROR: Well, a little bit. I
20 mean, my husband is wrongfully incarcerated, so that's
21 the only issue.

22 THE COURT: All right, I'm going to get to
23 you in a second.

24 Ms. Lilley, can you just tell me the town in
25 which you reside?

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1 PROSPECTIVE JUROR: Uniondale.

2 THE COURT: Married, committed relationship?

3 PROSPECTIVE JUROR: My husband passed away.

4 THE COURT: Okay, and are you currently
5 working?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: What kind of work do you do?

8 PROSPECTIVE JUROR: I work with Freeport
9 school bus company.

10 THE COURT: Okay, in what capacity?

11 PROSPECTIVE JUROR: As a matron on the bus
12 with the children.

13 THE COURT: Any children?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: How many?

16 PROSPECTIVE JUROR: Three.

17 THE COURT: How old are they?

18 PROSPECTIVE JUROR: Forty-two, 41, 34.

19 THE COURT: And can you tell us, to the
20 extent they're working, what their occupations are?

21 PROSPECTIVE JUROR: Yes, two do trucking and
22 one is a mechanic.

23 THE COURT: All right, any -- is there
24 anything, Ms. Lilley, either for personal reasons or
25 religious reasons -- you heard me indicate in a

1 criminal case the jury, to the extent that they can
2 come to a unanimous verdict, any reason you would not
3 be able to find either guilty or not guilty depending
4 upon your view of the evidence?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Okay. Any prior jury experience,
7 state, federal, criminal, civil, grand jury?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Anybody in your family -- any
10 close members of your family or friends involved in law
11 enforcement?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Have you or any close family
14 member been a victim of a crime?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Okay, and, finally, anybody close
17 to you been accused or convicted of a crime?

18 PROSPECTIVE JUROR: No.

19 THE COURT: All right, Ms. Steiert, why don't
20 you come up with both the attorneys?

21 (Sidebar conference held as follows:)

22 THE COURT: You started to say -- you were
23 hesitating when I asked about the principles of law and
24 then you started to indicate that there was someone
25 close to you --

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1 PROSPECTIVE JUROR: My husband.

2 THE COURT: How long has he been in jail?

3 PROSPECTIVE JUROR: For eight years now. He
4 has five more to go, but I hired a lawyer.

5 THE COURT: And what's he incarcerated for?
6 What's the charge?

7 PROSPECTIVE JUROR: For robbing and
8 assaulting an elderly woman, but they didn't catch him
9 at the scene of the crime or anything, so.

10 THE COURT: Was he your husband or were you
11 involved with him?

12 PROSPECTIVE JUROR: No, I knew of him and
13 married him -- I've been with him about four years now,
14 but I'm married for a year now.

15 THE COURT: Obviously, you feel that he's
16 wrongly convicted.

17 Do you think you could sit here as a juror in
18 this case and be fair to both sides?

19 PROSPECTIVE JUROR: Honestly, it's going to
20 be hard for me to be fair to both sides because there
21 are a lot of issues with cops. I don't fully believe
22 or trust them and they wrongfully put my husband in
23 jail.

24 THE COURT: So you would be of a mind set
25 that you would, perhaps, give a police officer or a

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1 detective lesser credibility?

2 PROSPECTIVE JUROR: That would be my starting
3 mind set unless I can get convinced otherwise, but --

4 THE COURT: Any questions?

5 MR. SCHECHTER: Do you think that you would
6 be able to give Mr. Gopaul a fair trial, my client?

7 PROSPECTIVE JUROR: If -- I believe so. I
8 don't know, depending on the evidence, but I don't
9 fully trust in a lot of the cops.

10 THE COURT: Do you have any questions?

11 MS. JOHNSON: Nothing other than what your
12 Honor said.

13 THE COURT: Just, if you would, have a seat
14 right by that file cabinet. I don't want to tell you
15 to go back up into the box again.

16 (Prospective juror steps down and sidebar
17 conference continues as follows:)

18 THE COURT: What's your position?

19 MR. SCHECHTER: The fact she may be skeptical
20 of police officers certainly is beneficial to me
21 because there may be issues concerning police officers,
22 but there's a collateral issue after we deal with this
23 particular one that I think has to be addressed as
24 well, so after we make a decision about this juror I
25 would like to raise other questions that I don't think

1 your Honor went into that apparently are germane in the
2 case.

3 She said she would be fair.

4 If your Honor feels based upon her
5 experiences with the cops she can't be fair in this
6 case, that's certainly a decision your Honor makes.

7 THE COURT: All right, what I'll do is I'll
8 let both of you explore it and then, depending on her
9 answers, if I need to speak to her further I'll do so.

10 MS. JOHNSON: Our position at this point is
11 that she said her starting point is she's not going to
12 believe the police officers and based on that we would
13 just ask to have her replaced at this point.

14 THE COURT: The fact that I raised it now
15 doesn't preclude you from making that argument when it
16 comes time to select.

17 For now I'm going to let --

18 (Sidebar conference concludes.)

19 THE COURT: Ms. Steiert, you can have a seat
20 back in the jury box.

21 (Sidebar conference held as follows:)

22 MR. SCHECHTER: There's another issue.

23 Apparently, the District Attorney's witness
24 list, there are two Assistant DAs, as we know.

25 Your Honor didn't make any inquiry, firstly,

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1 whether anyone has any relatives in the DA's Office.

2 THE COURT: I did.

3 MS. JOHNSON: Yeah.

4 MR. SCHECHTER: I apologize.

5 The other thing is since these two are going
6 to be witnesses, I would like to understand if anybody
7 feels, because there are Assistant DAs that are going
8 to be witnesses in this case, that they should be
9 treated like any other witness.

10 THE COURT: You want me to give the same
11 charge I did with respect to the police?

12 MR. SCHECHTER: Yeah.

13 THE COURT: Okay.

14 MR. SCHECHTER: And they're to draw no
15 inference that there are Assistant DAs on the witness
16 list.

17 (Sidebar conference concludes.)

18 THE COURT: All right, I think I may have
19 said this before when I talked about people who had
20 relatives or friends who were in law enforcement and I
21 believe I did ask with respect to, as well, anybody
22 that had any friends, acquaintances, relatives that
23 were Assistant District Attorneys.

24 As you recall me saying when I read the
25 witness list, there's going to be two Assistant -- it's

1 anticipated that there may be two Assistant District
2 Attorneys from Queens County that may be called as
3 witnesses.

4 Can everybody give me their assurance, I'm
5 going to address myself to the first row, that you'll
6 judge someone, even though they may be an Assistant
7 District Attorney, as you would anybody else, the same
8 charge, if you will, that I give you with respect to
9 police officers or detectives?

10 Anybody have any problem with that?

11 And in the second row, anybody have any
12 problem that judging someone, again, as you would
13 anybody else?

14 The fact that they're Assistant District
15 Attorneys, they're not going to get any more
16 credibility or any less credibility because they may
17 represent in their employment capacity the People of
18 the State of New York?

19 Anybody here feel that they would get greater
20 credibility?

21 Okay, and everyone will give me their
22 assurance they are not going to draw any inference
23 favorable to them because they are in their capacity as
24 Assistant District Attorneys?

25 First row anybody?

1 Second row?

2 All right -- by my clock here it's about
3 4:25. I did say when you first came in here we try to
4 end by 4:30. I try to get everybody out of here and in
5 their cars and on their way home to beat the Mineola
6 traffic, if you will, which kind of starts to pick up
7 in another 15, 20 minutes.

8 So I'm going to excuse you for now.

9 Obviously, as I told you, the both attorneys
10 still have to have the opportunity to question those of
11 you that are in the jury box right now. I'm going to
12 direct that you report back here tomorrow at 9:30.
13 Just let me double check as to where you're going to
14 assemble and I'll tell you that right now.

15 (Pause in the proceedings.)

16 THE COURT: One of my officers is going to
17 tell you where to go when you come back here. It's
18 anticipated that we're going to be in the same room
19 tomorrow morning.

20 I'm going to tell you to get here by 9:30.
21 I'm not going to promise you that we're going to be
22 starting by 9:30. As I told you, we have a regular
23 calendar. As I'm sure -- well, you probably came here
24 earlier than 9:30 today. By 9:30 the parking starts to
25 get very tight around here, so it may be in your best

1 interests to avoid the anxiety of trying to find a
2 parking spot. Maybe get here a little bit early, get
3 yourself a cup of coffee, relax.

4 Chris is going to tell you where to leave for
5 tomorrow. I need everybody here, including those of
6 you in the back of the courtroom, to be back here
7 tomorrow at 9:30, okay?

8 So you're excused for the evening. Just
9 follow my officer as you step out.

10 PROSPECTIVE JUROR: Will we have the same
11 facilities, parking, as we did today?

12 THE COURT: The officer will answer that
13 question for you.

14 COURT OFFICER: I'll answer everyone.

15 (Prospective jurors exit the courtroom.)

16 THE COURT: Anybody need to put anything on
17 the record?

18 MR. SCHECHTER: I have to reiterate one other
19 thing, your Honor. I have to reiterate one other thing
20 and that is I think it's beginning to sound like a
21 duck, quacks like a duck, white feathers, must be a
22 duck.

23 We're going to have Assistant District
24 Attorneys testifying, complaining witness, going into
25 matters that happened in Queens. The Assistant

1 District Attorney is going to be asking these pointed
2 questions. They're going to be testifying in court.
3 They're on the videotape.

4 I am concerned, your Honor, that as per those
5 Court of Appeals cases that this jury is going to draw
6 the inference that my client is charged in Queens
7 County with those other charges and I think it's
8 unavoidable.

9 I mean, no matter what limiting instruction
10 your Honor could make -- you know based upon counsel's
11 witness list that she's calling them as witnesses.

12 They're also bolstering, they're going to be
13 used as bolstering. The videotape pretty much speaks
14 for itself. You already made a determination as to the
15 validity of the videotape. They're on the videotape.
16 I think that they're calling the District Attorneys to
17 trial would be improper bolstering and reinforce my
18 earlier argument.

19 THE COURT: My ruling is my ruling. I'm not
20 going to change it at this point. There's nothing,
21 quite frankly, I don't think anybody can do over the
22 fact that a videotape is taken by two Assistants from
23 the Queens County DA's Office.

24 I don't know what you would suggest the
25 People should do, other than call at least one of them.

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1 You may have a point as to why it's necessary
2 to call both of them.

3 MS. JOHNSON: I wasn't planning on it. I
4 don't know who was going to be available. Jarred
5 Rosenblatt is on trial right now and he's summing up
6 next week. So I don't intend to call both of them and
7 my purpose for calling them is simply to put the video
8 into evidence.

9 And just with regard to what counsel said, as
10 a lay person or a juror, my thinking would be that they
11 would just assume it was Queens DA's Office because
12 they lived in Queens, but I don't think there's any
13 presumption that there would be -- there was -- just so
14 your Honor knows, I'm not planning on calling both of
15 them. I just needed both of them in case Jarred is on
16 trial.

17 MR. SCHECHTER: I've made my record, Judge.

18 THE COURT: You made your record.

19 I'll see you tomorrow. My guess is I would
20 get here by 9:45 and hopefully we'll try to get going
21 as soon thereafter as possible.

22 (Proceedings adjourned to Thursday, May 7th,
23 2009 at 9:30 a.m.)

24

25

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU : CRIMINAL TERM PART 80

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 2415N/08

5 -against- : :

6 HAROLD GOPAUL, : SEX ABUSE 1

7 Defendant. : Trial

8 -----X

9 May 7, 2009

10 252 Old Country Road
Mineola, New York

11 B E F O R E:

12 HONORABLE JAMES P. MacCORMACK,
13 Acting Supreme Court Justice

14 A P P E A R A N C E S:

15 (As previously noted.)

16 * * * * *

17
18 THE CLERK: This is the case on trial, the
19 People of the State of New York against Harold Gopaul,
20 Indictment 2415N of 2008.

21 Are the People ready?

22 MS. JOHNSON: Ready.

23 THE CLERK: Defense counsel ready?

24 MR. SCHECHTER: Ready.

25 THE COURT: Ms. Johnson, you want to put

1 something on the record?

2 MS. JOHNSON: Yes. I provided to the Court
3 and counsel some Rosario material that's ready at this
4 point.

5 I made certain to provide counsel with most,
6 if not all, of the grand jury testimony in both Queens
7 County and Nassau County for the witnesses.

8 I hope to have the rest of it finished today
9 for him, but I would just ask he acknowledge receipt of
10 what has been provided this morning.

11 MR. SCHECHTER: I can only acknowledge
12 receipt of a stack of papers, your Honor. Whatever
13 they contain, I just need to peruse that before I can
14 make an acknowledgment that I got the Rosario.

15 THE COURT: We'll give you a chance to see if
16 what you got itemized here is what you have.

17 I'm going to mark mine Court Exhibit 1.

18 All right, I think we're at the point where
19 both counsel are going to begin.

20 As I told you, it's 20 minutes the first
21 round. That is a real 20 minutes. You'll hear me say
22 two minutes when it gets to that point.

23 Please, I'm going to ask both of you to
24 refrain from explaining any of the concepts that I went
25 over. I do that for a reason. I try to go over it in

1 a little bit more detail than perhaps most other judges
2 do in an effort to not get caught up in attorneys
3 explaining what their idea of reasonable doubt,
4 presumption of innocence, is.

5 I have no problem with either one of you
6 asking them or getting their assurance or commitment,
7 if you will, that they can follow those concepts.

8 But I'm going to ask both of you to refrain
9 from giving your own interpretations and what beyond a
10 reasonable doubt and burden of proof and presumption of
11 innocence may be.

12 MR. SCHECHTER: Just one thing, if the Court
13 pleases.

14 I would like the Court to ask the jury, as
15 well is as the panel, if the fact that the allegations
16 in this case are sexual abuse, do any of you feel that
17 by virtue of those facts alone you cannot be fair and
18 impartial. Perhaps that could save some time and pare
19 down whatever jurors are going to be there simply
20 because I'm going to have to ask questions off of that.

21 One of the things that I would like to go
22 into, and I think I have to go into, is that whether or
23 not the jury can dispassionately evaluate the evidence
24 and evaluate each and every element of the crimes and
25 if they find a reasonable as to any one of the elements

1 of the crime that they will be able to acquit rather
2 than act emotionally. I think that's very important,
3 especially in the nature of the charges here and the
4 nature of the victim, and I need to be able to go into
5 that because if this jury is going to be hearing
6 Mr. Gopaul allegedly sexually abused his stepchild and
7 then the switch gets turned off the minute they hear
8 those words, then certainly I am not going to be able
9 to properly represent him because I will be speaking to
10 a deaf jury.

11 THE COURT: What I will do is I'll give them
12 or speak to them with regard to what a definition of a
13 fair juror should be. I doubt either one of you will
14 take any exception to it.

15 I'm not going to get into -- if you want to
16 get into the nature of the charges, either one of you,
17 that's your business.

18 MR. SCHECHTER: Okay.

19 THE COURT: I'm trying to cover as much
20 ground as I can in order to give both attorneys an
21 opportunity to cover the things that I think that they
22 really need to cover.

23 If they're ready?

24 Is anybody going to need the use of the
25 board?

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1 MS. JOHNSON: No, your Honor.

2 THE COURT: Mr. Schechter, if you need the
3 use of the board when you get up let me know, otherwise
4 I'll keep it next to me.

5 MS. JOHNSON: Are we picking two alternates?

6 THE COURT: At least, possibly three.

7 (Prospective jurors enter the courtroom.)

8 THE COURT: Okay, all right, good morning,
9 prospective members. Welcome back. Thank you for your
10 timeliness in being here.

11 We had a couple of preliminary matters we had
12 to cover before we began and I had a couple of calendar
13 matters I had to take care of so we could proceed
14 uninterrupted.

15 We're at the point where both attorneys, as I
16 indicated to you at the close of business yesterday,
17 are going to ask you questions concerning your
18 qualifications as a juror in this particular case, but
19 before they do that I just want to give one more
20 further charge, if you will, with respect to what I
21 believe is a definition of a fair juror and just keep
22 this in mind as you sit here and the attorneys ask you
23 questions and you consider your responses.

24 In reaching its verdict, guilty or not
25 guilty, the jury must be fair. It's important,

1 therefore, for you to know what makes a person a fair
2 juror so you can decide whether or not you can be a
3 fair juror.

4 A fair juror is a person who starts out with
5 no view in favor of or against the People or the
6 defendant or any witness, be the witness a police
7 officer or a civilian.

8 A fair juror is a person who will listen
9 carefully to all the testimony and other evidence and
10 not make a final decision on the verdict until the end
11 of the case after the juror has heard all the evidence,
12 has heard the lawyers' summations, has heard the
13 Court's final instructions on the law in the case and
14 has had an opportunity, after all of that, to discuss
15 the evidence with the other jurors and consider their
16 views.

17 And, finally, a fair juror is a person who,
18 without fear, favor, bias, prejudice or sympathy for
19 either the People or the defendant, or any witness, be
20 the witness a police officer or civilian, renders a
21 verdict, guilty or not guilty, the juror is convinced
22 -- is consistent with that juror's honest evaluation of
23 the testimony and other evidence and that juror's
24 honest application of the law.

25 With that, at this time, we'll hear from the

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1 People.

2 Ms. Johnson, if you would?

3 MS. JOHNSON: Thank you, Judge.

4 Good morning everyone, welcome back to jury
5 selection.

6 As the Court introduced me before, yesterday,
7 I am assistant District Attorney Jamie Johnson and it's
8 my privilege to stand here before you on behalf of
9 Kathleen Rice, the District Attorney of Nassau County,
10 in this criminal case.

11 You heard just a little bit from the Judge
12 yesterday about the charges in this case.

13 Mr. Ross, you had the ability to hear the
14 charges as the Judge had read them to you yesterday,
15 correct?

16 PROSPECTIVE JUROR: Yes.

17 MS. JOHNSON: Would simply the fact that the
18 charges in this case are about sex abuse, would that
19 fact alone prevent you from being a fair and impartial
20 juror in this particular case?

21 PROSPECTIVE JUROR: No.

22 MS. JOHNSON: And, Ms. Garfinkel, how about
23 you?

24 Would that fact alone, that this is a case
25 involving sex abuse, would that fact alone prevent you

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1 from being a fair and impartial juror in this case?

2 PROSPECTIVE JUROR: No.

3 MS. JOHNSON: Mr. Riley, how about you?

4 What do you think about that?

5 PROSPECTIVE JUROR: No.

6 MS. JOHNSON: Is there anybody here, by a
7 show of hands, that feels that the fact alone that this
8 is a sex case, would prevent them from being a fair and
9 impartial juror in this matter?

10 Mr. Mazza, I see that you raised your hand.

11 Can you tell us a little bit about what
12 you're thinking?

13 PROSPECTIVE JUROR: Well, it's an allegation,
14 so --

15 MS. JOHNSON: That is correct.

16 PROSPECTIVE JUROR: I feel that I'm biased,
17 basically, to this issue.

18 MS. JOHNSON: I just want to make sure --
19 okay, can you tell us what that bias is and if it's
20 something that you feel you want to talk about in
21 private --

22 PROSPECTIVE JUROR: Yes, basically, yes, in
23 private.

24 THE COURT: Actually, you know what,
25 Mr. Mazza, we'll get back to you before Ms. Johnson is

1 finished.

2 MS. JOHNSON: Is there anybody here, by a
3 show of hands -- yes, Mr. Ip?

4 PROSPECTIVE JUROR: Yes, I think my English
5 is not good enough, not fully understand, and I don't
6 know how to write English and spelling, so I --

7 MS. JOHNSON: We're not --

8 THE COURT: Let me ask you this, you're not
9 going to be asked to compose any essays or anything as
10 part of jury service.

11 However, it obviously is important that
12 you're able to hear all -- hear the witnesses, the
13 attorneys and myself as far as the instructions on the
14 law and what the witnesses have to say.

15 You were here, obviously, all day yesterday.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: I spoke to you yesterday. It
18 seemed to me as though you were understanding what I
19 was saying.

20 Is there things that you don't understand
21 or --

22 PROSPECTIVE JUROR: No, the simple English I
23 understand, simple conversation I understand, but when
24 you talking about further details I don't understand.

25 THE COURT: When I talk about verdict?

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1 PROSPECTIVE JUROR: Something with a special
2 meaning, I don't understand.

3 THE COURT: You heard me say that the verdict
4 in this case, should the jury reach a verdict, is
5 either guilty or not guilty.

6 Do you understand that concept?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: And do you understand that the
9 verdict would have to be unanimous, in other words, all
10 12 jurors would have to agree on a particular verdict?

11 You understand that?

12 PROSPECTIVE JUROR: Yes, I understand, but
13 sometimes, when they show the evidence, those meaning,
14 maybe I don't understand.

15 THE COURT: Okay.

16 All right, Ms. Johnson?

17 PROSPECTIVE JUROR: It's hard to explain.

18 MS. JOHNSON: Mr. Ip, thank you for your
19 honesty.

20 And, members of the jury, this is the time
21 when we get to speak to you and we just ask that you're
22 honest and open with us and if there's anything that
23 comes to mind that you want to talk about, please raise
24 your hand because now is the time, not when you're
25 potentially sworn in as a juror.

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1 Yes, Mr. Wu?

2 PROSPECTIVE JUROR: My wife mentioned to me
3 last night, I forgot to tell the Judge, that actually I
4 have an appointment we made a month ago with my son's
5 college next Friday with the counselor, the guidance
6 counselor of college.

7 THE COURT: And that's what, Friday the 22nd?

8 PROSPECTIVE JUROR: 22nd.

9 THE COURT: Or the 15th?

10 PROSPECTIVE JUROR: It's Friday. I don't
11 know what date. Next Friday.

12 THE COURT: And that's something you had
13 previously planned?

14 PROSPECTIVE JUROR: Yes, three months ago,
15 actually. My wife told me.

16 MS. JOHNSON: And she didn't tell you.
17 That's okay, we do that a lot.

18 PROSPECTIVE JUROR: She told me, but --

19 THE COURT: You didn't pay attention.

20 Go ahead, Ms. Johnson.

21 MS. JOHNSON: Does anybody else have any
22 conflicts or any problems for a potential two-week
23 trial they were unable to address with the Court
24 yesterday?

25 Mr. Riley?

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1 PROSPECTIVE JUROR: I think I resolved that.

2 MS. JOHNSON: Very good.

3 So just getting back to the nature of the
4 case, is there anybody here who feels based on the
5 allegations and charges they would not be able to sit
6 as a fair and impartial juror in this particular case?

7 Mr. Murray, how about you?

8 PROSPECTIVE JUROR: Not at all.

9 MS. JOHNSON: Can you assure both parties
10 that you can give the Court that promise?

11 PROSPECTIVE JUROR: Absolutely.

12 MS. JOHNSON: Mr. Arroyo, how about you?

13 PROSPECTIVE JUROR: Not at all. It's all
14 right.

15 MS. JOHNSON: You're going to learn
16 throughout the course of the trial that the defendant
17 and the victim in this case are members of the same
18 family and I'm going to ask you if that fact alone,
19 that they are family members, would that fact alone
20 prevent you from being a fair and impartial juror in
21 this particular case?

22 Mr. Ross, how about you?

23 PROSPECTIVE JUROR: No.

24 MS. JOHNSON: Can you assure us, promise us
25 that?

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1 PROSPECTIVE JUROR: Yes.

2 MS. JOHNSON: Ms. Garfinkel, how about you?

3 PROSPECTIVE JUROR: Not a problem.

4 MS. JOHNSON: Ms. Lilley, how about you?

5 PROSPECTIVE JUROR: Not a problem.

6 MS. JOHNSON: Is there anybody here, by a
7 show of hands, that would have that would have a
8 problem or be unable to be fair and impartial based on
9 that fact alone?

10 Ms. Farina, how about you?

11 PROSPECTIVE JUROR: No problem.

12 MS. JOHNSON: Ms. Cohen?

13 PROSPECTIVE JUROR: Fine.

14 MS. JOHNSON: Mr. DeBenedittis, how about
15 you?

16 PROSPECTIVE JUROR: No.

17 MS. JOHNSON: Is there anybody that believes
18 that crimes cannot be committed between family members?

19 Mr. Mellish, how about you?

20 PROSPECTIVE JUROR: No.

21 MS. JOHNSON: Mr. Arroyo, what are your
22 feelings about that?

23 PROSPECTIVE JUROR: Not at all, there's no
24 problem.

25 MS. JOHNSON: Can you accept the fact that

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1 members of the same family can commit a crime against
2 each other?

3 Is that reasonable to you?

4 PROSPECTIVE JUROR: Sure, they can.

5 MS. JOHNSON: Ms. Cohen, what do you think
6 about that?

7 PROSPECTIVE JUROR: It's sad, but it can
8 happen.

9 MS. JOHNSON: Ms. Farina, what do you think
10 about that?

11 PROSPECTIVE JUROR: It can definitely happen.

12 MS. JOHNSON: And, Mr. Murray, can you -- is
13 it reasonable to you and can you accept the fact that a
14 sex crime can be committed between members of the same
15 family?

16 PROSPECTIVE JUROR: Sure.

17 MS. JOHNSON: Mr. DeBenedittis, how about
18 you?

19 PROSPECTIVE JUROR: Yes.

20 MS. JOHNSON: Is there anybody here, by a
21 show of hands, that believes a sex crime cannot be
22 committed between members of the same family?

23 Mr. Mazza?

24 PROSPECTIVE JUROR: The chances are much
25 lower in the crime if it's a family member.

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1 MS. JOHNSON: Is there anybody here that
2 feels that way by a show of hands?

3 Ms. Lilley, how do you feel about that?

4 PROSPECTIVE JUROR: It can happen.

5 MS. JOHNSON: And would you be able to listen
6 to the evidence and listen to all the testimony and
7 keep an open mind?

8 PROSPECTIVE JUROR: Sure.

9 MS. JOHNSON: And would you be able to follow
10 the Judge's instructions that you must keep an open
11 mind until the close of the case and you're instructed
12 as to the law?

13 PROSPECTIVE JUROR: Sure.

14 MS. JOHNSON: Mr. Mellish, I see you shaking
15 your head.

16 Can you assure us of that as well?

17 PROSPECTIVE JUROR: Yes.

18 MS. JOHNSON: Does anybody here believe that
19 family matters -- or if a crime is committed between
20 family members that that should remain private and that
21 law enforcement should not be involved?

22 Mr. Ross, what do you think about that?

23 PROSPECTIVE JUROR: That should be no
24 problem.

25 MS. JOHNSON: And can you -- is it reasonable

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1 to you that law enforcement would get involved when
2 there are crimes committed between members of the same
3 family?

4 PROSPECTIVE JUROR: If a crime is committed
5 law enforcement should definitely get involved.

6 MS. JOHNSON: Mr. Riley, what do you think
7 about what Mr. Ross just said?

8 Would you agree with that?

9 PROSPECTIVE JUROR: If it's reported then
10 it's a crime.

11 MS. JOHNSON: Ms. Cohen, I see you shaking
12 your head.

13 What do you think about that?

14 PROSPECTIVE JUROR: I agree with that.

15 MS. JOHNSON: Mr. Arroyo, I see you shaking
16 your head as well.

17 PROSPECTIVE JUROR: I do agree and it should
18 be exposed and everyone should know, let it out.

19 MS. JOHNSON: Is there anybody here that
20 doesn't feel that way?

21 Ms. Steiert, how about you?

22 PROSPECTIVE JUROR: No.

23 MS. JOHNSON: Mr. Arroyo, you just mentioned
24 to us if it becomes reported people should know about
25 that.

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1 Now, can you understand and is it reasonable
2 to you that a crime may not be reported the instant
3 that it happens?

4 Does that make sense to you?

5 PROSPECTIVE JUROR: Yeah, it's hush in the
6 beginning, I believe, until it leaks out or someone
7 mentions it. But in the beginning I believe it's
8 hushed, they don't talk about it.

9 MS. JOHNSON: And is there anybody here that
10 agrees with what Mr. Arroyo just said, by a show of
11 hands, that sometimes crimes don't get reported right
12 away?

13 I see most of you raising your hands.

14 Mr. Murray, what factors would you think
15 would come into play as to whether or not a crime would
16 get reported right away?

17 PROSPECTIVE JUROR: Seriousness of the
18 incident, of the actual incident that occurred.

19 MS. JOHNSON: Mr. DeBenedittis, what factor
20 would you consider?

21 PROSPECTIVE JUROR: I agree with Mr. Murray,
22 also relationship with the victim -- I mean, with the
23 perpetrator as well. If it's someone close to you you
24 may be more hesitant to report it.

25 MS. JOHNSON: Ms. Cohen, how about you, what

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1 do you think about what Mr. DeBenedittis said?

2 PROSPECTIVE JUROR: I agree, the victim might
3 be fearful in the beginning and then, for whatever
4 reason, become angry and then want to say something.

5 MS. JOHNSON: And you used the word fearful.

6 What types of things or types of factors
7 would you think would cause somebody to be fearful?

8 PROSPECTIVE JUROR: The relationship between
9 the two parties.

10 MS. JOHNSON: Ms. Farina, what do you think
11 about what Ms. Cohen just said?

12 PROSPECTIVE JUROR: I agree with that.

13 MS. JOHNSON: Ms. --

14 PROSPECTIVE JUROR: I agree.

15 MS. JOHNSON: Ms. Lilley, I see you shaking
16 your head.

17 PROSPECTIVE JUROR: I agree.

18 MS. JOHNSON: I want to talk about something
19 Ms. Cohen just brought up about fear.

20 Ms. Lilley, would you agree fear is not
21 something that just happens in a moment in time?

22 MR. SCHECHTER: I'm going to object, Judge,
23 at this point. I think counsel is going a little bit
24 into --

25 THE COURT: Do me a favor, Mr. Schechter, if

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1 you have an objection just say objection, don't give us
2 a speech.

3 The objection is overruled.

4 MS. JOHNSON: Ms. Lilley, would you agree
5 with me that fear is not something that just happens at
6 a moment in time?

7 PROSPECTIVE JUROR: No.

8 MS. JOHNSON: Can you accept the fact that
9 fear is something that can be ongoing?

10 PROSPECTIVE JUROR: Yes.

11 MS. JOHNSON: Ms. Garfinkel, what do you
12 think about that?

13 PROSPECTIVE JUROR: I agree with that.

14 MS. JOHNSON: And is anybody here afraid of
15 dogs or afraid of flying?

16 Show of hands?

17 It's okay to admit to it.

18 PROSPECTIVE JUROR: Afraid of flying.

19 MS. JOHNSON: Why are you afraid of flying,
20 Ms. Lilley?

21 PROSPECTIVE JUROR: The height, heights, I
22 don't like them.

23 MS. JOHNSON: Do you choose not to go on
24 airplanes because of your fear on flying?

25 PROSPECTIVE JUROR: I have to go to Jamaica,

1 but anywhere else I'm not taking the plane.

2 MS. JOHNSON: And did something happen in
3 your life that led you to be fearful of flying?

4 PROSPECTIVE JUROR: No. I think it's just
5 the height that I'm scared of.

6 MS. JOHNSON: Is anybody else here afraid of
7 flying or dogs or knows somebody that's afraid of dogs?

8 PROSPECTIVE JUROR: Yes.

9 MS. JOHNSON: Ms. Cohen, how about you?

10 PROSPECTIVE JUROR: I know someone afraid of
11 dogs.

12 MS. JOHNSON: Is it an adult or child?

13 PROSPECTIVE JUROR: It is an adult who used
14 to own a St. Bernard.

15 MS. JOHNSON: Is that a friend or family
16 member?

17 PROSPECTIVE JUROR: Yes, a good friend.

18 MS. JOHNSON: And do you know why that person
19 is afraid of dogs?

20 PROSPECTIVE JUROR: She has no idea either.

21 MS. JOHNSON: Have you ever been in a
22 situation with your friend where she has, perhaps,
23 avoided going to somebody's house because they have a
24 dog?

25 PROSPECTIVE JUROR: Yes.

1 MS. JOHNSON: And is that reasonable to you
2 that she would react that way because of this fear?

3 PROSPECTIVE JUROR: Sure.

4 MS. JOHNSON: And can you accept the fact
5 that your friend changes her activities and changes
6 parts of her life because of this fear?

7 PROSPECTIVE JUROR: Very little, but, yeah.

8 MS. JOHNSON: And you may not agree with it,
9 but you can understand that, right?

10 PROSPECTIVE JUROR: Oh, yeah.

11 MS. JOHNSON: If you were ever walking down
12 the street with her, would she probably cross the other
13 street if there was a dog?

14 PROSPECTIVE JUROR: We do walk in a group and
15 whenever we see dogs we stand in front of her.

16 MS. JOHNSON: Because she's fearful?

17 PROSPECTIVE JUROR: Yes.

18 MS. JOHNSON: Is this a fear that is ongoing
19 with her?

20 PROSPECTIVE JUROR: Yeah.

21 MS. JOHNSON: It's not just a fear she had
22 one day, right?

23 PROSPECTIVE JUROR: Oh, no, no, no, many
24 years. She used to live on a farm and never went near
25 the animals.

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1 MS. JOHNSON: And that was her reaction to
2 her fear, right?

3 PROSPECTIVE JUROR: Yeah.

4 MS. JOHNSON: Is there anybody here that
5 believes that fear is something that just happens at a
6 moment in time and isn't something that can stay with
7 you for a long time?

8 Mr. Ross, what do you think about that?

9 PROSPECTIVE JUROR: Fear could stay with you
10 for a long period of time, it can.

11 MS. JOHNSON: And is it reasonable to you
12 that you may change your activities or things that you
13 do in your life because of that fear?

14 PROSPECTIVE JUROR: Without a doubt.

15 MS. JOHNSON: And, Mr. Riley, would you agree
16 that some people would react differently to a fear
17 based on their life experience?

18 Does that make sense to you?

19 PROSPECTIVE JUROR: Yes.

20 MS. JOHNSON: Ms. Lilley, how about you?

21 PROSPECTIVE JUROR: Yes.

22 MS. JOHNSON: Mr. DeBenedittis, does it make
23 sense to you that it would be difficult for a witness
24 to come into a courtroom and tell a group of strangers
25 about something that happened to them?

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1 PROSPECTIVE JUROR: Correct.

2 MS. JOHNSON: And would you agree with me
3 that the nature of what they would tell you would
4 affect their emotions and their demeanor in a
5 courtroom?

6 PROSPECTIVE JUROR: Yes.

7 MS. JOHNSON: Mr. Murray, what factors do you
8 think would play into how a witness testifies other
9 than the nature of what they're testifying about?

10 What things would you look for?

11 PROSPECTIVE JUROR: Can you repeat the
12 question one more time?

13 MS. JOHNSON: Sure.

14 What factors do you think would affect how a
15 witness testifies in court in front of a group of
16 strangers?

17 PROSPECTIVE JUROR: Seriousness, the nature
18 of the allegation, nature of the alleged crime.

19 THE COURT: Two minutes, Ms. Johnson.

20 MS. JOHNSON: Thank you.

21 Mr. Arroyo, would you agree with me that age
22 may be a factor as to how somebody testifies?

23 PROSPECTIVE JUROR: I -- yes, a person could
24 be embarrassed in front of everyone and maybe she
25 couldn't express herself well.

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1 MS. JOHNSON: Ms. Cohen, what do you think
2 about that?

3 PROSPECTIVE JUROR: I agree.

4 MS. JOHNSON: Ms. Garfinkel, what are your
5 thoughts about that?

6 PROSPECTIVE JUROR: I agree. They could be
7 ashamed or embarrassed.

8 MS. JOHNSON: And we use the word in the law
9 called corroboration or to support.

10 Mr. Ross, if I told you that there was a car
11 accident on the corner of Old County Road and you
12 didn't see it, what types of evidence or types of
13 things would you look for to corroborate what I told
14 you that there's a car accident?

15 Would you agree with me that if there was
16 glass on the floor, that would be a type of
17 corroboration?

18 PROSPECTIVE JUROR: Yes, I would.

19 MS. JOHNSON: Ms. Garfinkel, what about you?

20 PROSPECTIVE JUROR: If you heard a crash, an
21 ambulance came.

22 MS. JOHNSON: Mr. Riley, what types of things
23 would you look for?

24 PROSPECTIVE JUROR: A report, police report,
25 accident report, what have you.

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1 MS. JOHNSON: And that's physical
2 evidence.

3 Would you agree with that?

4 PROSPECTIVE JUROR: Yes, yes.

5 MS. JOHNSON: Now, Ms. Cohen, what if
6 somebody else didn't see the car accident, would
7 physical evidence be enough for you to corroborate what
8 somebody told you about a car accident?

9 PROSPECTIVE JUROR: I don't know.

10 MS. JOHNSON: Can you accept the fact that
11 crimes are not committed in public all the time?

12 Does that make sense to you?

13 PROSPECTIVE JUROR: Of course.

14 MS. JOHNSON: Mr. Arroyo, I see you shaking
15 your head.

16 Would you agree with that?

17 PROSPECTIVE JUROR: Yes, I was agreeing.

18 MS. JOHNSON: I maybe have 30 seconds left,
19 so is there anything we've missed that you haven't had
20 a chance to talk about thus far?

21 Any thoughts or feelings that have come up
22 that any of you haven't had the ability to speak about?

23 By a show of hands, can everybody promise
24 yourself and promise myself and the defendant and this
25 Court that if I prove our case beyond a reasonable

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1 doubt that you can find this defendant guilty?

2 By a show of hands can everybody make me that
3 promise?

4 Mr. Mazza, I see you're not raising your
5 hand.

6 Would you not --

7 THE COURT: We're going to speak to Mr. Mazza
8 right now.

9 Mr. Mazza, step up with both counsel, please.

10 (Sidebar conference held as follows:)

11 THE COURT: You said that you had, I think, a
12 bias.

13 PROSPECTIVE JUROR: Yes, I'm in a huge court
14 battle right now for over two years and basically just
15 everybody in the system seems to be incompetent. They
16 don't know what's going on. He's innocent for all I
17 know and just a huge battle I'm going through right
18 now --

19 THE COURT: So you're of a mind set right now
20 you feel you couldn't be fair?

21 PROSPECTIVE JUROR: Especially when it comes
22 to a woman saying something that's allegedly true.

23 THE COURT: Do you have any questions of
24 Mr. Mazza?

25 MR. SCHECHTER: I have no questions --

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1 Mr. Mazza, do you think if the Judge instructs you on
2 the law --

3 PROSPECTIVE JUROR: No.

4 MS. JOHNSON: That's enough.

5 PROSPECTIVE JUROR: There there's an
6 allegation on me which is a lie and it's -- this is a
7 cut-throat case, shouldn't be going on for two years.
8 It's ridiculous. It's upsetting my five-year-old
9 daughter, which it started out she was three and now
10 she's five.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR: Disrupted my job, my
13 professional license. I have five professional
14 licenses, fingerprinted and bonded.

15 THE COURT: You're clearly, at this point,
16 upset.

17 At this point, unless anybody has any
18 objection, I'm going to excuse Mr. Mazza.

19 MS. JOHNSON: No.

20 MR. SCHECHTER: No.

21 THE COURT: Give my clerk your name.

22 PROSPECTIVE JUROR: Sorry.

23 THE COURT: That's all right. Give my clerk
24 your name.

25 (Prospective juror excused.)

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1 THE COURT: I'm not going to ask them to step
2 out at this point, I just wanted to get this guy out of
3 here, unless you feel you want him --

4 MR. SCHECHTER: Both him and Ip.

5 THE COURT: 13 and 14, I'm just telling you
6 now, so you don't waist time on them.

7 (Sidebar conference concludes.)

8 MS. JOHNSON: Time's up?

9 THE COURT: Time's up.

10 MS. JOHNSON: Thank you all.

11 THE COURT: All right, Mr. Schechter, if you
12 would, please?

13 MR. SCHECHTER: May it please the Court.

14 Good morning, ladies and gentlemen.

15 Now, there's only one way to approach this
16 and that is directly.

17 The charges in this case are, frankly, very,
18 very difficult. Mr. Gopaul is accused of sexually
19 abusing his stepdaughter.

20 Now, do any of you feel that because those
21 are the charges, either by virtue of your own
22 experiences, what you may have read in the paper or of
23 things that you might just feel intrinsically, that
24 those factors make it very difficult for you to sit on
25 a case of this nature?

1 I'm asking as a group. Okay.

2 Now, have any of you had experiences in your
3 family or close friends of people who have alleged that
4 a relative or friend has been sexually abused, a child,
5 someone below the age of 17?

6 Now, of course, my concern is that my client
7 will get a fair trial.

8 What do I mean by a fair trial?

9 There are many things that go into evaluating
10 whether a witness is telling the truth.

11 Now, for example, Ms. Lilley, you are a
12 school bus driver.

13 PROSPECTIVE JUROR: I work in the bus taking
14 care of the kids.

15 MR. SCHECHTER: Let me give you a
16 hypothetical, and this is a theoretical situation.
17 You're a school bus driver. There's one child left in
18 the bus for you to drop off. It's you and the child on
19 the bus. Child drops -- you drop the child off. The
20 next thing you know you get a call from the supervisor,
21 "Well, little Jimmy alleges, Ms. Lilley, that you
22 touched him inappropriately."

23 MS. JOHNSON: Objection.

24 THE COURT: No, I'll overrule that.

25 MR. SCHECHTER: Thank you, Judge.

1 Little Jimmy alleges that you touched him
2 inappropriately.

3 You say, truthfully, "Wait a minute, that's
4 not true. I didn't do that."

5 And they say, "Well, little Jimmy says you
6 touched him right in a certain little place and he
7 showed there is a mark in a certain little place. We
8 have no choice to arrest you and you get arrested."

9 You understand that in situations like this
10 it's almost impossible for you to prove the negative.

11 Now, do you feel that that kind of
12 possibility could exist?

13 PROSPECTIVE JUROR: Well, yes, but I have
14 never seen it, I have never heard about it, with the
15 school bus company.

16 MR. SCHECHTER: Not this school bus company,
17 I'm talking about any school bus company. You've read
18 the newspapers.

19 Or that you slapped a child. It doesn't have
20 to be sexually. You slapped the child. It's you and
21 the child on that bus.

22 It's impossible to prove the negative and the
23 law gives somebody protection because they realize it's
24 impossible to prove the negative and that protection is
25 the presumption of innocence and the other protections

1 that the Judge is going to mention to you.

2 Now, my concern is that that presumption of
3 innocence could be difficult for people to maintain
4 when they hear testimony from what might be considered
5 to be a vulnerable witness, a young girl.

6 Now, the Judge is going to charge you that
7 each crime has elements.

8 What do I mean by elements?

9 Elements mean in order to prove their case
10 the People must prove my client guilty beyond a
11 reasonable doubt of each specific element of the crime
12 that he will describe to you.

13 So that, for example, if I tell you in order
14 to prove someone guilty you must show that he raised
15 his arm in the air, he had a yellow balloon in his hand
16 and he had red slacks - I'm giving you an absurd
17 example - they prove he has red slacks, he has a yellow
18 balloon, but they can't prove he's got his arm in the
19 air.

20 Now, this might be a situation where you feel
21 sorry for the victim because maybe he's got a problem
22 with his arm, he can't raise his arm in the air.

23 That kind of sympathy, that kind of empathy,
24 while admirable, cannot, must not, be used in
25 deliberations.

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1 Instead, what must be used in deliberations
2 is a cool, dispassionate analysis.

3 You might hear evidence and that may make you
4 angry. It may affect you. You may say, "My G-d, I
5 would never do something like that."

6 Would you let -- any of you, any of you,
7 would you let those feelings interfere with your
8 deliberation or how you would evaluate the evidence?

9 Mr. DeBenedittis?

10 PROSPECTIVE JUROR: No, I don't think so.

11 MR. SCHECHTER: Mr. Murray?

12 PROSPECTIVE JUROR: No.

13 MR. SCHECHTER: Mr. Arroyo?

14 PROSPECTIVE JUROR: No.

15 MR. SCHECHTER: Ms. Cohen?

16 PROSPECTIVE JUROR: No.

17 MR. SCHECHTER: Mr. Riley?

18 PROSPECTIVE JUROR: The facts speak for
19 themselves.

20 MR. SCHECHTER: Sorry?

21 PROSPECTIVE JUROR: I said the facts would
22 speak for themselves and I think I concur with what you
23 said.

24 MR. SCHECHTER: It's very difficult. I have
25 two daughters. Many of you have children. I haven't

1 gotten into that yet.

2 Would the fact that the case involves an
3 allegation that a man sexually abused -- allegedly
4 sexually abused his stepdaughter and the stepdaughter
5 is going to testify, my concern is that the switch gets
6 turned the minute you hear her testimony and you don't
7 follow the rest of the case.

8 Do any of you feel that there's a danger of
9 that?

10 PROSPECTIVE JUROR: No.

11 MR. SCHECHTER: Mr. Mellish?

12 PROSPECTIVE JUROR: No.

13 MR. SCHECHTER: Mr. Riley?

14 PROSPECTIVE JUROR: No.

15 MR. SCHECHTER: Mr. Ross?

16 PROSPECTIVE JUROR: No.

17 MR. SCHECHTER: Ms. Garfinkel?

18 PROSPECTIVE JUROR: No.

19 MR. SCHECHTER: How about you, Ms. Lilley?

20 PROSPECTIVE JUROR: No.

21 MR. SCHECHTER: Ms. Farina?

22 PROSPECTIVE JUROR: No.

23 MR. SCHECHTER: Incidentally, I usually
24 address ladies as Ms. -- I grew up in a different
25 generation, so I try to tread the middle line. Please

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1 forgive if I address you as Ms. And you want to be
2 called something else.

3 How about you, Ms. Steiert?

4 PROSPECTIVE JUROR: No.

5 MR. SCHECHTER: Mr. Wu?

6 PROSPECTIVE JUROR: No.

7 MR. SCHECHTER: Mr. Ip?

8 PROSPECTIVE JUROR: I didn't quite
9 understand.

10 MR. SCHECHTER: Now, did you have a question
11 you wanted to ask me, Mr. Riley?

12 PROSPECTIVE JUROR: No.

13 MR. SCHECHTER: Now, do all of you agree that
14 sometimes when we react to things we don't always react
15 to them verbally?

16 Sometimes we do things or say things in
17 private moments that might be the true indication of
18 what might have happened in a certain situation or you
19 might say, "I looked at this person." The person
20 says -- I'll give you a prime example.

21 Guy makes a claim that he got injured in a
22 car accident.

23 Well, the insurance company is really
24 doubtful about the fact that this guy got involved in
25 an accident and what they do is record the guy working

1 out in his garden because he says his legs hurt him,
2 his back hurts him, they got a video of him dancing at
3 a wedding or a bar mitzvah.

4 Now, the man's back may have been hurting
5 him, but there he is dancing at a wedding or bar
6 mitzvah or doing his garden.

7 So there are indications from other conduct
8 that might belie or contradict what that person says.

9 For example, how many of you like to dance on
10 this jury?

11 Is it possible to dance well angry, if you're
12 angry, right?

13 So if you view a person under various
14 circumstances, you view that person's conduct and that
15 conduct seems to contradict or belie what she might say
16 to you, no matter how emotional, no matter how
17 persuasive, you're looking into the psyche of another
18 person basically, do I have your assurance that you
19 will evaluate everything in this case, including that
20 kind of evidence, if you see it?

21 Okay?

22 Now, are there any of you, any of you, that
23 believe that they cannot, they cannot, come in with a
24 verdict of not guilty because there is a 17 --
25 18-year-old girl, young woman, that's going to testify,

1 she might get upset, she might be emotional, and that's
2 certainly emotionally evocative to all of us. It's my
3 concern those emotions will be communicated to you.

4 Now, we have a very beautiful system in our
5 country. Sometimes when we feel that an administration
6 is too conservative or too reactionary, right wing, we
7 come back in the next election and go the other way.

8 Then we may feel this guy is giving away the
9 market here, "Yeah, we elected him, but now he's just
10 not doing it for me," so now we go the other way.

11 That kind of American patriotism, American
12 feeling, is what we need in a jury. We need you to be
13 analytical, not emotional. We need you to look at all
14 of the evidence and not close your minds because a
15 young woman testifies and may be upset and may say
16 horrible things, may say horrible things about my
17 client.

18 Now, one other thing, and that's a police
19 officer.

20 As I explained to you many -- rather, as the
21 Judge explained to you, and I don't mean to put myself
22 in that chair, far from it, but as the Judge explained
23 to you a police officer is a human being. As such, a
24 police officer is not immune to reacting emotionally to
25 a situation.

1 Now, once again, very hard to prove a
2 negative.

3 A police officer, most of the time, is like a
4 fox in charge of the chicken coop.

5 MS. JOHNSON: Objection.

6 THE COURT: Yeah, sustained.

7 MR. SCHECHTER: What I mean is if a person is
8 under arrest, ain't nobody else coming into that
9 precinct unless they want him to.

10 MS. JOHNSON: Objection.

11 THE COURT: I'll allow that. Overruled.

12 MR. SCHECHTER: So, a person arrested is
13 there and the cop is there and the police officers are
14 there and everybody is there, if they want to be there.

15 So sometimes, in order to evaluate what might
16 have happened before -- let's say someone makes a
17 statement. In order to evaluate if that statement was
18 made voluntarily, there are also indicia you look to -
19 maybe his clothing is ruffled, maybe he was in custody
20 for 16 hours - to determine if a statement was made
21 fairly, was made accurately, made truthfully, or
22 whether it was perhaps forced.

23 Now, once again, I leave it to you to do the
24 evaluation.

25 Bless you.

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1 MS. JOHNSON: Bless you.

2 MR. SCHECHTER: Look at the evidence and
3 please keep your minds open. My biggest fear here is
4 that your minds will close once the complainant gets on
5 the witness stand. I need you to be strong and I need
6 you to wait to hear all of the evidence.

7 Do I have your promises that you will do
8 that?

9 Thank you.

10 Your Honor?

11 THE COURT: Thank you very much.

12 Can I just see Ms. Steiert and both counsel
13 real quick, please?

14 (Sidebar conference held as follows:)

15 THE COURT: I thought one or both of the
16 lawyers would ask you some questions after your
17 comments yesterday, but obviously they left it to me.

18 I know yesterday you mentioned the fact that
19 your husband is in jail and you made a couple of
20 comments yesterday that you felt that you would not be
21 able to treat the police officer or detective like
22 anybody else.

23 You've now sat through -- you've heard me a
24 little bit more, you've heard both attorneys. I just
25 want to follow up with you with regard to that.

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1 Do you feel that, in your present mind set
2 now, you'll be able to give both sides a fair trial?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: You're shaking your head. You
5 have to answer yes or no.

6 PROSPECTIVE JUROR: Yeah.

7 THE COURT: You feel you can evaluate a
8 police officer like anybody else?

9 PROSPECTIVE JUROR: I think it would be a
10 little hard, but I think I can.

11 THE COURT: Do you think you could be fair to
12 the People in this case?

13 Obviously, they're going to be call the
14 police and the detectives.

15 PROSPECTIVE JUROR: Yes.

16 MR. SCHECHTER: And the defendant?

17 THE COURT: And the defendant?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: I mean, I had to ask you about
20 the People because obviously -- in light of your
21 comment yesterday, but obviously both sides.

22 PROSPECTIVE JUROR: I feel that after I
23 looked at the evidence I can make a fair decision.

24 THE COURT: You haven't seen anything yet.

25 PROSPECTIVE JUROR: I know.

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1 THE COURT: You've heard a little bit about
2 the case. The attorneys are not allowed to really
3 preview that. You know a little bit about the case at
4 this point, more than you did yesterday, that's why I
5 brought you up.

6 If you can give me your assurance that you
7 can be fair to both sides, knowing what type of case it
8 is, knowing who's going to be called as witnesses --

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Anybody have any questions?

11 MR. SCHECHTER: No.

12 MS. JOHNSON: You said that you think you can
13 be fair.

14 Can you promise us 100 percent that you would
15 be fair, though, and if you can't, it's okay, we just
16 need to know now.

17 PROSPECTIVE JUROR: Honestly, I don't know.
18 All I know is the until the circumstances --

19 THE COURT: I need to have an unequivocal
20 assurance that you can be fair and I know I'm putting
21 you on the spot, but I would rather you tell me yes or
22 no.

23 PROSPECTIVE JUROR: I think it will be hard,
24 but I think, yes, I can.

25 THE COURT: Okay, anybody else have any

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1 questions?

2 MR. SCHECHTER: No questions.

3 MS. JOHNSON: No questions.

4 THE COURT: When both of you are ready just
5 let me know.

6 MS. JOHNSON: Okay.

7 (Sidebar conference concludes.)

8 (Pause in the proceedings.)

9 THE COURT: For those of you in the box and
10 those that are in the audience, the attorneys are going
11 to consider your answers, make their selections, if you
12 will.

13 I'm going to ask if anybody needs to use the
14 bathroom, just ask one of my officers, they'll let you
15 know, but, please, I'm going to ask you to be back here
16 within the next, you know, five minutes, have everybody
17 back in the courtroom. If anybody needs to move around
18 for any reason, step outside and stretch, use the
19 bathroom.

20 For those of you that are in the jury box,
21 just look around, make sure you remember who your
22 neighbor is, okay?

23 (Brief recess in the proceedings.)

24 THE COURT: We're considering the whole
25 board. Mazza was discharged for cause.

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1 MR. SCHECHTER: Mr. Ip and Mr. Wu I think we
2 agreed are going, too.

3 MS. JOHNSON: Yes, I agree.

4 MR. SCHECHTER: So then we're left with
5 perempts.

6 THE COURT: Not so fast.

7 MS. JOHNSON: Slow down a second.

8 THE COURT: Thirteen and 14 are discharged
9 for cause, Mr. Wu and Mr. Ip. Mr. Mazza was previously
10 discharged for cause. Those are on consent of both
11 parties.

12 People, any challenges for cause, the entire
13 board?

14 MS. JOHNSON: People challenge for cause
15 Juror Number 12, Ms. Steiert, based on the fact that
16 both yesterday she said that her starting point would
17 not be believing cops, today at the bench she says --
18 she was quite equivocal. Says she thinks she can be
19 fair and then she wasn't sure. I don't believe she
20 gave us 100 percent. Just her whole hesitance with
21 answering and her words that she thinks she can, we
22 would challenge her for cause.

23 THE COURT: Mr. Schechter?

24 MR. SCHECHTER: I disagree. I think she had
25 rehabilitated herself. I think she said after

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1 listening to the comments and listening to the comments
2 of counsel and the Court that she could be fair and
3 impartial, that she could sit on this case. I don't
4 think it was equivocal at all. She was struggling with
5 her demons, but obviously everybody comes into court
6 with demons of one sort other another.

7 THE COURT: She indicated yesterday she would
8 have some problem with listening to law enforcement,
9 but after hearing both parties and after listening to
10 the comments, although she initially hesitated when I
11 asked her point blank if she could give an unequivocal
12 assurance that she could be fair to both sides, I
13 believe her words were -- I think she said, "I think it
14 would be difficult, but, yes."

15 So I think under those circumstances I'm
16 going to deny the application for cause.

17 People, peremptory -- by the way, we're
18 dealing with a Class D Felony as a top count?

19 MS. JOHNSON: Yes.

20 MR. SCHECHTER: Yes.

21 THE COURT: Everyone has ten peremptories
22 each.

23 People, the entire board, peremptory?

24 MS. JOHNSON: The first perempt would be
25 Juror Number 2, Mr. Mellish, second perempt, Juror

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1 Number 10, Ms. Farina, third perempt, Juror Number 12,
2 Ms. Steiert.

3 THE COURT: All right, and that's it?

4 MS. JOHNSON: That's it.

5 THE COURT: People have exercised three
6 peremptories.

7 Defendant, any challenges for cause?

8 MR. SCHECHTER: No, Judge.

9 THE COURT: One through nine at this point?

10 MR. SCHECHTER: Yes.

11 THE COURT: Any peremptory challenges?

12 MR. SCHECHTER: Yes, three, four and that's
13 Richard Riley and Rena Cohen, Juror Number 7 and
14 Juror Number 8, Ms. Garfinkel.

15 MS. JOHNSON: Was that three by the defense?

16 MR. SCHECHTER: No, I had four.

17 THE COURT: Four.

18 Is that correct, Mr. Schechter?

19 MR. SCHECHTER: Yes, four.

20 THE COURT: They are Mr. DeBenedittis,
21 Ms. Cohen, Mr. Riley and Ms. Garfinkel.

22 That means Mr. Ross will be our first sworn
23 juror, our alternate (sic), Mr. Arroyo will be our
24 second sworn juror, Mr. Murray third.

25 MR. SCHECHTER: Mr. Ross is an alternate?

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1 THE COURT: I apologize. I meant to say
2 foreman.

3 Mr. Murray is Juror Number 3 and Ms. Lilley
4 is Juror Number 4.

5 Does that comport with everybody's --

6 MS. JOHNSON: Yes, Judge.

7 MR. SCHECHTER: Yes, Judge.

8 THE COURT: All right, People have exercised
9 three the first round, defendant four.

10 We'll fill the box.

11 All right, can I just see both attorneys real
12 quick?

13 (Sidebar conference held off the record.)

14 THE COURT: I wanted to cover in the back one
15 other thing. I reconsidered doing openings by Friday.

16 What I'm going to do is start with openings
17 and testimony Monday morning.

18 Does anybody have any objection to me
19 discharging the four sworn until Monday morning at
20 9:30?

21 MS. JOHNSON: Absolutely not.

22 MR. SCHECHTER: No.

23 THE COURT: The ones that are selected?

24 MR. SCHECHTER: So Monday we're beginning
25 testimony and we're opening Friday?

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1 THE COURT: No.

2 MR. SCHECHTER: Opening and testimony Monday?

3 THE COURT: I think it makes it a little bit
4 easier on everybody because I think, at best, you know,
5 at the rate we're going, I don't know if we're going to
6 have a jury by today. I don't want to do openings at
7 3:30 Friday afternoon, it's silly.

8 MS. JOHNSON: Okay, thank you.

9 (Prospective jurors enter.)

10 THE COURT: All right, for those of you in
11 the jury box, please give your kind attention to my
12 clerk, if you would, please?

13 THE CLERK: The following jurors whose names
14 I call have been selected to be on this jury:

15 Juror Number 1 is Eric Ross, Juror Number 2
16 is Frances Arroyo, Juror Number 3 is Brian Murray and
17 Juror Number 4 is Gem Lilley.

18 If your name has been called please remain in
19 your seat.

20 If your name has not been called you're
21 excused from this case and must return to central jury.

22 THE COURT: All right, for those of you that
23 are excused are excused with the thanks of the Court.
24 Thank you very much. Please watch your step as you
25 step out.

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1 (Prospective jurors excused.)

2 THE CLERK: Are the remaining jurors
3 satisfactory to the People?

4 MS. JOHNSON: Yes.

5 THE CLERK: To the defense?

6 MR. SCHECHTER: Yes, Judge.

7 (Jurors duly sworn.)

8 THE COURT: All right, you could have a seat,
9 our first sworn jurors in the case. Thank you, again.

10 The good news for you four is that you're
11 going to be excused right now and you're going to be
12 directed to report back Monday morning at 9:30 and the
13 reason I say that is obviously we just began jury
14 selection. There's really no reason for you to come
15 back here or remain here, for that matter, as we go
16 through the rest of the jury selection process.

17 So I feel reasonably confident that we're
18 going to be able to get going first thing Monday
19 morning with opening statements by the People and the
20 defendant, should he choose to make one, and the
21 calling of witnesses.

22 So what I'm going to do at this point is
23 excuse you. We'll have you back here Monday morning,
24 either Chris or Kenny, my court officers, will go over
25 with you, as you step out, parking issues and what you

1 can expect at this point going forward.

2 So, enjoy the rest of the week, have a good
3 weekend. We'll see you back here Monday morning, 9:30,
4 in this building.

5 (Sworn jurors exit.)

6 THE COURT: All right, the remainder of the
7 people in the audience, again, as I indicated to you
8 yesterday, there's almost 100 percent likelihood you're
9 going to be in the jury box by the end of today. We're
10 going to fill the next 14 seats.

11 If you hear your name called please bring all
12 your personal belongings. Watch your step as you step
13 in the jury box. We're going to fill the jury box all
14 the way back coming forward.

15 So just listen to my clerk, Artie, for your
16 name and if you hear your name called please step
17 forward.

18 THE CLERK: Seat 1, Lisa Juergens,
19 J-u-e-r-g-e-n-s; Seat 2, Victoria Volpe, V-o-l-p-e;
20 Seat 3, Donna Loverde, L-o-v-e-r-d-e; Seat 4, Samantha
21 Grob, G-r-o-b; Seat 5, Kenneth Fowler, F-o-w-l-e-r;
22 Seat 6, Frank Ciminiello, C-i-m-i-n-i-e-l-l-o;
23 Seat 7, Frederick Meyers, M-e-y-e-r-s; Seat 8, Jerry
24 Ashe, A-s-h-e; Seat 9, Edna Striffolino,
25 S-t-r-i-f-f-o-l-i-n-o; Seat 10, Gregory DiLeo,

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1 D-i-L-e-o; Seat 11, William Galletti, G-a-l-l-e-t-t-i;
2 Seat 12, Michael Mongelli, M-o-n-g-e-l-l-i, Seat 13,
3 Antonio Casesa, C-a-s-e-s-a; Seat 14, Elena Ferrigno,
4 F-e-r-r-i-g-n-o.

5 THE COURT: All right, for our new 14, again,
6 thank you for being here and welcome to the jury box.

7 I'm not going to repeat what I went into
8 yesterday. As I indicated to you yesterday, there was
9 a good likelihood you'd be seated in the jury box, but
10 I'm just going to kind of briefly kind of cover some of
11 the things that I covered with the first 14 that were
12 here yesterday.

13 Does anybody recognize any of the parties to
14 the case?

15 Does anybody need for me to repeat the names
16 on the witness list?

17 If you do, if there was a name you heard
18 yesterday that sounded familiar, I would be more than
19 happy to repeat it.

20 I don't see any hands raised so nobody
21 recognized any names?

22 Obviously, from both hearing myself yesterday
23 and now the attorneys this morning, you have heard a
24 little bit about the case. I explained to you
25 yesterday what your role would be if you're selected as

1 a juror. You're the finder of the facts. I do not
2 find facts in this particular case. That's not my job.
3 You are the finder of facts. You make a determination
4 as to whether or not the defendant is guilty or not
5 guilty.

6 My job is to explain the law, to preside over
7 the trial, make rulings concerning issues of law and
8 evidence.

9 Anybody have any problem with that?

10 Anybody feel for any reason they couldn't do
11 that?

12 You've heard, somewhat, about the nature of
13 the case.

14 You've heard me explain the first thing this
15 morning that a fair juror is one who comes in here
16 without any predisposition to either side, could be
17 fair to both sides, who can render a verdict without
18 bias, prejudice, sympathy for either side or for any
19 witness, complainant, police, detectives.

20 Anybody here feel that they couldn't do that?

21 That's quite a few people. Sounds like
22 people have been paying very close attention to what's
23 been going on.

24 All right, first row, just show me by way of
25 hands.

1 All right, Mr. -- Ms. Juergens, and your
2 reason would be?

3 PROSPECTIVE JUROR: Personal reasons.

4 THE COURT: Okay, you feel --

5 PROSPECTIVE JUROR: I could not be objective
6 at all. I could not be fair.

7 THE COURT: Okay. Let me just say this
8 before I ask any other questions.

9 No -- I don't expect everybody to come in
10 here, if you will, without any type of prior
11 experiences, some negative, some positive, and not
12 have, perhaps, certain prejudices or bias. It's part
13 of who we are and what we are and we're all a product,
14 if you will, of our experiences. So it's not that I
15 expect, you know, people to income in here, if you
16 will, with a blank slate.

17 The issue is, is that should you have these
18 types or have had these types of experiences or
19 situations in your life, whether they're positive or
20 negative, can you put those aside and render a verdict
21 based upon the evidence and the testimony that you hear
22 in the case?

23 That's what we're all asking you if you could
24 do.

25 If you can't do it then obviously now is the

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1 time to tell us, but it's -- I don't want anybody to
2 have this unrealistic expectation that, you know,
3 there's a quote-unquote perfect juror. You know, when
4 you heard me before, I talked about what a fair juror
5 should be. There's no such thing as a perfect juror,
6 if you will. So I want you to just kind of keep that
7 in mind.

8 Ms. Juergens, you feel that given, from what
9 you've either heard so far, the nature of the case, you
10 wouldn't be able to be --

11 PROSPECTIVE JUROR: I would not be fair.

12 THE COURT: Okay.

13 Anybody else?

14 Ms. Volpe?

15 PROSPECTIVE JUROR: I guess because I'm
16 female and I feel that, you know, women are supposed to
17 be not messed with.

18 THE COURT: All right, well, I mean --

19 PROSPECTIVE JUROR: That's pretty much just
20 the way I feel, you're not supposed to.

21 THE COURT: Do you feel because of the
22 allegation in this case, because the allegation
23 involves a female, that you feel that you would be more
24 disposed to giving her more credibility because of it?

25 PROSPECTIVE JUROR: I would imagine so.

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1 THE COURT: All right.

2 Anybody else in that first row?

3 Ms. Loverde?

4 PROSPECTIVE JUROR: I just don't feel
5 comfortable with the whole situation. I'm just
6 uncomfortable, completely.

7 THE COURT: This may come as a surprise to
8 you, but jury service, and particularly in criminal
9 cases, is never meant to be easy. It's not an easy
10 process. It's not easy to pass judgment on another
11 human being, believe me, I recognize that and nobody
12 here, the participants in this case, don't expect you
13 to say this is going to be real easy to do. It's
14 difficult.

15 PROSPECTIVE JUROR: But I mean the situation
16 of what he's being charged with, I don't feel
17 comfortable with it.

18 THE COURT: And you think that because of the
19 nature of the charges you would not be able to, if you
20 will, coolly and calmly go through the evidence and make
21 a decision?

22 PROSPECTIVE JUROR: Yeah.

23 THE COURT: Okay.

24 Anybody else in that first row?

25 Ms. Grob, and your reason is?

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1 PROSPECTIVE JUROR: Personal experiences.

2 THE COURT: That would render you to be
3 unable to be fair and impartial?

4 PROSPECTIVE JUROR: Right.

5 THE COURT: Mr. Ciminiello?

6 PROSPECTIVE JUROR: Yes, I don't think I
7 could be fair in a sexual case.

8 THE COURT: I might as well ask you,
9 Mr. Meyers.

10 PROSPECTIVE JUROR: I think I could be fair.

11 THE COURT: You can, okay.

12 Going to the back row, anybody else?
13 Mr. DiLeo?

14 PROSPECTIVE JUROR: Due to the nature of this
15 crime, I've pretty much already made a decision and I
16 don't think I can be fair to either side.

17 THE COURT: To either side, okay.

18 Anybody else in the second row?

19 Mr. Galletti?

20 PROSPECTIVE JUROR: It's all personal.

21 THE COURT: All right, and I'm not looking
22 for you to reveal something that you may be
23 uncomfortable with, but is it of such a nature you
24 don't feel you could put it aside and decide this case?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Mr. Mongelli?

2 PROSPECTIVE JUROR: I don't think I could be
3 fair in this trial. It's personal nature.

4 THE COURT: Ms. Ferrigno?

5 PROSPECTIVE JUROR: Personal, very similar
6 situation.

7 THE COURT: All right, make that call to
8 central jury. We're going to need some more jurors
9 coming over here this afternoon.

10 Let me see all the attorneys first.

11 (Sidebar conference held as follows:)

12 THE COURT: Let's not waste any time.

13 We'll go through them one by one. If I miss
14 somebody let me know.

15 Juergens, Volpe, Loverde, Grob, Ciminiello in
16 the first row.

17 Then Mr. Fowler and Mr. Meyers is going to
18 stay put.

19 Mr. DiLeo, Mr. Gallette, Mongelli and
20 Ferrigno.

21 MR. SCHECHTER: I don't know if -- Edna
22 Striffolino, prospective juror number nine, I don't
23 know if she raised her hand.

24 THE COURT: I didn't see it. Believe me, it
25 doesn't look like anybody is shy at this point.

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1 MR. SCHECHTER: Maybe you could just ask her
2 if she raised her hand.

3 (Sidebar conference concludes.)

4 THE COURT: Ms. Striffolino, did you raise
5 your hand at all?

6 PROSPECTIVE JUROR: I did. I should have
7 brought it up yesterday. I have a medical procedure at
8 3:30 today, but I didn't know if it warranted -- it's a
9 stress test.

10 THE COURT: I know you're all the way in the
11 back, just come up real quick, if you will. I
12 apologize.

13 (Sidebar conference held as follows:)

14 THE COURT: Okay, you have a stress test this
15 afternoon?

16 PROSPECTIVE JUROR: At 3:30. I'm sorry.

17 THE COURT: You should be out of here by this
18 morning.

19 PROSPECTIVE JUROR: Okay.

20 THE COURT: Either you get picked and you
21 won't be back until Monday or you don't get picked and
22 you'll be gone.

23 PROSPECTIVE JUROR: That would be great.
24 Thank you.

25 THE COURT: Have a seat.

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1 (Sidebar conference concludes.)

2 THE COURT: All right, as you hear your
3 names, please take your belongings and be careful as
4 you step out, particularly past other jurors.

5 Ms. Juergens, Ms. Volpe, Ms. Loverde,
6 Ms. Grob, Ms. -- Mr. Ciminiello, Mr. DiLeo,
7 Mr. Galletti, Mr. Mongelli, and Ms. Ferrigno.

8 (Prospective jurors excused.)

9 THE COURT: Those of you who remain, just
10 stay where you are so we don't cause havoc in terms of
11 the seating arrangements.

12 Those of you, please, we're going to fill the
13 box. Please listen to your name and, again, if your
14 name is called please bring your personal belongings as
15 well and being careful stepping into the jury box.

16 THE CLERK: Seat 1, Lee Mucci, M-u-c-c-i.

17 PROSPECTIVE JUROR: It's actually Leeann.

18 THE CLERK: Seat 2, Maureen Troy, T-r-o-y;
19 Seat 3, Anthony Siena, S-i-e-n-a; Seat 4, Donald
20 O'Shea, O-'-S-h-e-a; Seat 6, Rebecca Cioffi,
21 C-i-o-f-f-i, Seat 10, Nancy Doughty, D-o-u-g-h-t-y;
22 Seat 11, William Notholt, N-o-t-h-o-l-t, Seat 12,
23 Octavia Melendez, M-e-l-e-n-d-e-z; and, seat 14, John
24 Lynch, L-y-n-c-h.

25 THE COURT: All right, those of you who have

1 just been called again, welcome. Thank you for being
2 here.

3 Those of you that just came into the box, is
4 there anybody who either needs for me to repeat the
5 witness list or recognizes any names or is familiar
6 with anybody in the case that you've heard so far?

7 Anybody?

8 All right, you've heard, and I might as well
9 get to this first, from both sides, you've heard me
10 yesterday as well as this morning, talk about what a
11 fair juror should be or what we hope they will be and
12 you've heard about the nature of the case.

13 You heard me discuss different legal
14 principles which I'll go over with you in a minute, but
15 is there anybody in the first row for any reason,
16 insofar as the nature of the case is concerned or what
17 you've heard so far, that you feel that you could not,
18 not that you don't want to serve, but you cannot be
19 fair and impartial?

20 Anybody?

21 Ms. Mucci?

22 PROSPECTIVE JUROR: Right.

23 THE COURT: And what is it that would make
24 you unable to serve Ms. Mucci?

25 PROSPECTIVE JUROR: I'm a nurse. I'm usually

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1 for the underdog and I'm also partial to cops. I have
2 a lot of friends that are cops.

3 THE COURT: And you feel you would, perhaps,
4 give them greater credibility than somebody else?

5 PROSPECTIVE JUROR: I feel I would. It's
6 their job to assess. We kind of see the world the same
7 way.

8 THE COURT: You work in an emergency room?

9 PROSPECTIVE JUROR: No, critical care area.

10 THE COURT: Anybody else in that first row?
11 Mr. Siena?

12 PROSPECTIVE JUROR: Yes, my cousin got
13 started as an ADA in Queens County.

14 My daughter's godfather, Suffolk County
15 police officer. My goddaughter's grandfather is
16 vice-president of SBA and I wouldn't be able to
17 discount their testimony as anything other than law.
18 That's their environment that they deal in on a regular
19 thing. I wouldn't be able to judge against them, you
20 know, knowing that's their niche.

21 THE COURT: All right, you feel that
22 regardless of what you would hear during the course of
23 the case, whatever --

24 PROSPECTIVE JUROR: I would tend to side with
25 them being that's their niche, yes.

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1 Anybody else in the first row?

2 PROSPECTIVE JUROR: I do know police
3 officers.

4 THE COURT: That's fine. We all know police
5 officers. That's not uncommon. That's not a reason to
6 be disqualified, if you will.

7 Anybody in the second row?

8 Mr. --

9 PROSPECTIVE JUROR: Notholt.

10 My step-granddaughter was molested at seven
11 years old by her mother's boyfriend and he was
12 acquitted. I don't know if I could give this guy the
13 same break.

14 THE COURT: Do you think because of that
15 experience --

16 PROSPECTIVE JUROR: His whole testimony is
17 rattling my nerves.

18 THE COURT: And Mr. Melendez?

19 PROSPECTIVE JUROR: I have a close experience
20 with that, but I would like to share with you because I
21 wouldn't like to state it in public.

22 THE COURT: Okay, anybody else?

23 Mr. Lynch?

24 PROSPECTIVE JUROR: I'm fine.

25 THE COURT: All right, Mr. Melendez, why

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1 don't you come up with both attorneys?

2 (Sidebar conference held as follows:)

3 PROSPECTIVE JUROR: About a couple of years
4 ago my wife was accusing me with something similar with
5 one of my step-daughters, which never happened, but
6 that experience still haunts me to this day.

7 THE COURT: Did you get charged wit?

8 PROSPECTIVE JUROR: No, it was just I have a
9 lot of problems in the relationship because of that. I
10 have a step-daughter, she's a schizophrenic. She's
11 telling my wife --

12 THE COURT: Any questions?

13 MR. SCHECHTER: No, Judge.

14 MS. JOHNSON: Do you do you feel that that
15 personal experience would be something you would have
16 trouble putting aside in this particular case?

17 PROSPECTIVE JUROR: Definitely. It still
18 haunts me to this day.

19 THE COURT: Just have a seat back in the box.

20 (Prospective juror steps down.)

21 MR. SCHECHTER: While I'm here, is there
22 still a peremptory for seven and above?

23 THE COURT: To be honest, I don't know.
24 You're talking about Mr. Notholt?

25 MR. SCHECHTER: I'm talking about Mr. Lynch.

1 THE COURT: I'll look into that between now
2 and when we make the selection.

3 Unless I hear differently, I'm assuming the
4 following are excused on consent, Ms. Mucci --

5 MS. JOHNSON: Yes.

6 MR. SCHECHTER: Yes.

7 THE COURT: -- Mr. Siena, Mr. Notholt,
8 Mr. Melendez, obviously.

9 I think we're good on everybody else, right?

10 MR. SCHECHTER: I think that's it, Judge, so
11 far.

12 MS. JOHNSON: Um-hum.

13 (Sidebar conference concludes.)

14 THE COURT: All right, as you hear your name
15 called just, again, with the thanks of the Court,
16 just -- you can step out. Please take your belongings
17 as you step out and my clerk or one of my officers will
18 tell you where to go.

19 Ms. Mucci, Mr. Siena, Mr. Notholt and
20 Mr. Melendez.

21 (Prospective jurors excused.)

22 THE COURT: Again, we'll do our best to keep
23 this box full. If you hear your name step forward with
24 your belongings and be careful as you step into the
25 jury box.

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1 THE CLERK: Seat 1, C.C. Saladino,
2 S-a-l-a-d-i-n-o; Seat 3, Ann Gordon, G-o-r-d-o-n;
3 Seat 11, Neil Sklar, S-k-l-a-r; Seat 12, Linda Burton,
4 B-u-r-t-o-n.

5 THE COURT: For those new members, again,
6 welcome. It's Mr. Saladino, Ms. Gordon, Ms. --
7 Mr. Sklar and Ms. Burton is the last one.

8 Let me ask you at the outset, anybody have
9 any problems for any reason that they feel they could
10 not be fair and impartial in this kind of case, given
11 what you've heard so far?

12 Ms. Gordon?

13 PROSPECTIVE JUROR: My sister was raped.
14 This is not --

15 THE COURT: This is not a case for you?

16 PROSPECTIVE JUROR: Yeah.

17 THE COURT: Anybody else?

18 Ms. Burton?

19 PROSPECTIVE JUROR: I also could not. I
20 can't sit on this case for personal reasons.

21 THE COURT: All right, either side have any
22 objection to excusing these two jurors?

23 MS. JOHNSON: No, Judge.

24 MR. SCHECHTER: None.

25 THE COURT: So, Ms. Burton and Ms. Gordon,

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1 with my thanks. My officer will tell you what to do at
2 this point.

3 (Prospective jurors excused.)

4 THE COURT: All right, chances are 50/50 out
5 there.

6 THE CLERK: Seat 3, Rommel Daniel,
7 D-a-n-i-e-l, R-o-m-m-e-l.

8 THE COURT: Mr. Daniel, before I have you go
9 all the way back there, is there any reason you can't
10 be fair and impartial?

11 PROSPECTIVE JUROR: Just the length of the
12 trial, that's it.

13 THE COURT: All right, well -- I'll let the
14 attorneys and I'll talk to you a little bit about that,
15 but come and join us.

16 THE CLERK: Seat 12, John Lopori,
17 L-o-p-o-r-i.

18 THE COURT: How about you, Mr. Lopori?

19 PROSPECTIVE JUROR: I have a lot of close
20 friends that are cops. I don't think they're foxes in
21 a chicken coop. I feel I may favor what the cop has to
22 say.

23 Also, the nature of the case with the girl
24 being raped.

25 THE COURT: All right, take your card with my

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1 thanks.

2 (Prospective juror excused.)

3 THE COURT: Still 50/50.

4 THE CLERK: Seat 12, Zeeshan Humayun. First
5 name, Z-e-e-s-h-a-n, last name, H-u-m-a-y-u-n.

6 THE COURT: Come join us.

7 PROSPECTIVE JUROR: I have a problem with
8 this case. I have a personal problem and I've already
9 made my decision. I can't do this.

10 THE COURT: Mr. Humayun has a problem. He
11 cannot be fair and impartial.

12 Anybody have any problems?

13 MS. JOHNSON: No, Judge.

14 MR. SCHECHTER: No.

15 THE COURT: Okay.

16 THE CLERK: Seat 12, Adam Toro, T-o-r-o.

17 PROSPECTIVE JUROR: No objections.

18 THE COURT: All right, again, everybody
19 welcome.

20 Moving to the concepts of law that I
21 discussed yesterday; the burden of proof, always on the
22 People, never shifts to the defendant.

23 There's often a very big misconception that a
24 defendant in a criminal case has to prove his or her
25 innocence. They do not. The defendant never has any

1 burden. The defendant does not have to testify in a
2 criminal case and, more importantly, that's not -- the
3 fact that a defendant does not testify is not an
4 inference from which you can make an adverse inference,
5 if you will, or negative inference over the fact if
6 they choose to exercise that right.

7 Presumption of innocence. Defendant is
8 presumed innocent throughout the course of the trial
9 and only unless and until you're satisfied beyond a
10 reasonable doubt that the charges, if you will, have
11 been proven beyond a reasonable doubt.

12 Anybody have any problems with any of those
13 concepts?

14 Those are bedrock fundamental principles in
15 any criminal case in the United States of America.

16 Anybody have any problems with that?

17 Okay. All right, what I'm going to do, then,
18 is then I'm going to, at this point, begin to go
19 through the questions I asked everybody individually.
20 I'm going to go through the same manner we did
21 yesterday.

22 Again, town in which you live, married or
23 committed relationship, your occupation, your spouse's
24 occupation, if your children are of an age where they
25 are working, if you could just tell us the nature of

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1 their work.

2 Mr. Saladino, we'll start off with you, sir.

3 The town in which you live?

4 PROSPECTIVE JUROR: Massapequa Park.

5 THE COURT: And married or committed
6 relationship?

7 PROSPECTIVE JUROR: Single.

8 THE COURT: Okay, are you currently working?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: What type of work?

11 PROSPECTIVE JUROR: CPA.

12 THE COURT: In your own business?

13 PROSPECTIVE JUROR: No, with a public
14 accounting firm.

15 THE COURT: Ms Troy, town in which you live?

16 PROSPECTIVE JUROR: New Hyde Park.

17 THE COURT: Married or committed
18 relationship?

19 PROSPECTIVE JUROR: Single and I do computer
20 work for an online tech support company.

21 THE COURT: Okay.

22 Mr. Daniel?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Type of work?

25 PROSPECTIVE JUROR: I'm an attorney.

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1 THE COURT: You're an attorney?

2 PROSPECTIVE JUROR: Yes, I am.

3 THE COURT: Married or committed
4 relationship?

5 PROSPECTIVE JUROR: I'm single.

6 THE COURT: What kind of law do you practice?

7 PROSPECTIVE JUROR: I'm self-employed. I do
8 different things.

9 THE COURT: Okay. And is that in Nassau
10 County or some other location?

11 PROSPECTIVE JUROR: Nassau County.

12 THE COURT: I indicated yesterday that we
13 anticipate, and I try to give an outside date, if you
14 will, when I try to do this and most of the time I'm
15 right, sometimes I'm off by a day or two, but of the
16 22nd of May. That's two weeks from this Friday.

17 PROSPECTIVE JUROR: That's highly burdensome
18 to me. I'm by myself.

19 THE COURT: And you got no coverage, nobody
20 else to cover?

21 What kind of work, a little bit of
22 everything?

23 PROSPECTIVE JUROR: I do personal injury, I
24 do real estate, you know, whatever comes through.

25 THE COURT: All right, Mr. O'Shea, town in

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1 which you live?

2 PROSPECTIVE JUROR: Baldwin.

3 THE COURT: Married or --

4 PROSPECTIVE JUROR: Married, three children.

5 THE COURT: What kind of work do you do?

6 PROSPECTIVE JUROR: I work for a customs and
7 border patrol agency.

8 THE COURT: In a law enforcement capacity?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: For how long?

11 PROSPECTIVE JUROR: Eighteen years.

12 THE COURT: Any particular location?

13 PROSPECTIVE JUROR: JFK airport.

14 THE COURT: Your wife, is she currently
15 working?

16 PROSPECTIVE JUROR: She's a travel consultant
17 in her own business.

18 THE COURT: You have three children?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: How old?

21 PROSPECTIVE JUROR: Nine, 11 and 13.

22 THE COURT: All either in high school or
23 middle school?

24 PROSPECTIVE JUROR: Middle and elementary.

25 THE COURT: Mr. Fowler, town in which you

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1 live?

2 PROSPECTIVE JUROR: Long Beach. I have a
3 residency concern. I live in Long Beach. I go to
4 school and I teach in the Bronx. I have an apartment
5 in Harlem. I just don't want to possibly cause a
6 problem. I live with my parents. I'm just out of
7 college.

8 THE COURT: In terms of either your voter
9 registration, your driver's license --

10 PROSPECTIVE JUROR: All is in Nassau County,
11 Long Beach, and I spend summers, weekends, home in Long
12 Beach.

13 THE COURT: Okay, very good.

14 PROSPECTIVE JUROR: Single and a student and
15 teacher.

16 THE COURT: Okay, great.

17 Ms. Cioffi, town in which you live?

18 PROSPECTIVE JUROR: Bellmore.

19 THE COURT: Married or committed
20 relationship?

21 PROSPECTIVE JUROR: Single.

22 THE COURT: Working?

23 PROSPECTIVE JUROR: Tax accountant.

24 THE COURT: Okay. Any particular company or
25 you work for yourself?

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1 PROSPECTIVE JUROR: I work for a company.

2 THE COURT: Okay.

3 MS. JOHNSON: Your Honor, can we approach for
4 one just quick second before your Honor continues?

5 THE COURT: Something you need to put on the
6 record?

7 MS. JOHNSON: Probably not.

8 (Discussion held at the bench, off the
9 record.)

10 THE COURT: Mr. Meyers, town in which you
11 live, sir?

12 PROSPECTIVE JUROR: Freeport.

13 THE COURT: Married --

14 PROSPECTIVE JUROR: Single.

15 THE COURT: Currently working?

16 PROSPECTIVE JUROR: At C.W. Post College.
17 I'm a chef.

18 THE COURT: How long have you been doing
19 that?

20 PROSPECTIVE JUROR: Ten years.

21 THE COURT: Children?

22 PROSPECTIVE JUROR: No children.

23 THE COURT: Mr. Asche, town in which you
24 live, sir?

25 PROSPECTIVE JUROR: Lakeview.

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1 THE COURT: Okay, married or committed
2 relationship?

3 PROSPECTIVE JUROR: Single.

4 THE COURT: Are you currently working?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: What type of work do you do?

7 PROSPECTIVE JUROR: Okay, Town of Hempstead,
8 part-time clergy.

9 THE COURT: Town of Hempstead.

10 PROSPECTIVE JUROR: And I'm a part-time
11 clergy.

12 THE COURT: Town of Hempstead and you're a
13 part-time clergy?

14 What do you do for the Town of Hempstead?

15 PROSPECTIVE JUROR: Department of General
16 Services.

17 THE COURT: And children, if any?

18 PROSPECTIVE JUROR: Nope.

19 THE COURT: Okay.

20 Ms. Strifflino?

21 PROSPECTIVE JUROR: Massapequa. I'm a
22 teaching assistant in the Massapequa school district.

23 THE COURT: Married or committed
24 relationship?

25 PROSPECTIVE JUROR: Married.

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1 THE COURT: Children?

2 PROSPECTIVE JUROR: Children, three.

3 THE COURT: What does your husband do for a
4 living?

5 PROSPECTIVE JUROR: He's a principal in a
6 school.

7 THE COURT: Your children, approximately how
8 old?

9 PROSPECTIVE JUROR: Sixteen, 13 and 15.

10 THE COURT: Okay, all right, great.

11 Ms. Doughty, town in which you live?

12 PROSPECTIVE JUROR: Hicksville.

13 THE COURT: Married or committed
14 relationship?

15 PROSPECTIVE JUROR: Married.

16 THE COURT: Children?

17 PROSPECTIVE JUROR: Two.

18 THE COURT: How old?

19 PROSPECTIVE JUROR: Twenty-seven and
20 nineteen.

21 THE COURT: Are you currently employed?

22 PROSPECTIVE JUROR: Yes, I am, teacher's aide
23 in Trinity Lutheran School.

24 THE COURT: And your husband, is he currently
25 working?

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1 PROSPECTIVE JUROR: Yes, he works for the
2 IRS.

3 THE COURT: Okay, and your children, are they
4 working as well?

5 PROSPECTIVE JUROR: Handicapped daughter, 19,
6 is going for her GED and working.

7 THE COURT: Okay, great.

8 Mr. Sklar, town in which you live?

9 PROSPECTIVE JUROR: I live in Lynbrook. I'm
10 a single teacher with no children.

11 THE COURT: Mr. Toro, town in which you live?

12 PROSPECTIVE JUROR: East Meadow.

13 THE COURT: Married or committed
14 relationship?

15 PROSPECTIVE JUROR: Single.

16 THE COURT: Your employment, if any?

17 PROSPECTIVE JUROR: I work in finance foreign
18 exchange.

19 THE COURT: In what capacity?

20 PROSPECTIVE JUROR: I work for an online
21 foreign exchange brokerage, business development and
22 institutional sales.

23 THE COURT: All right, Mr., is it, Casesa?

24 PROSPECTIVE JUROR: Casesa.

25 THE COURT: Town in which you live?

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1 PROSPECTIVE JUROR: Floral Park, married, two
2 kids, 32 and 29.

3 THE COURT: Are you currently working?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: What kind of work do you do?

6 PROSPECTIVE JUROR: School bus driver.

7 THE COURT: Is your wife currently working?

8 PROSPECTIVE JUROR: She's on disability.

9 THE COURT: Okay, how about your children?

10 PROSPECTIVE JUROR: My son is a tennis
11 instructor, lives in San Diego, and my daughter works
12 at the Garden City Hotel, customer service.

13 THE COURT: All right, and, finally,
14 Mr. Lynch, town in which you live?

15 PROSPECTIVE JUROR: East Williston.

16 THE COURT: Working currently?

17 PROSPECTIVE JUROR: Recently retired.

18 THE COURT: What did you do before you
19 retired?

20 PROSPECTIVE JUROR: Banking.

21 THE COURT: Married or committed
22 relationship?

23 PROSPECTIVE JUROR: Married, three sons.

24 THE COURT: How old?

25 PROSPECTIVE JUROR: Forty-one, 32, 35.

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1 THE COURT: Can you tell us what they do for
2 a living, if anything?

3 PROSPECTIVE JUROR: The oldest is both a
4 paramedic and a lieutenant in the FDNY.

5 Second lives at home with me and works at
6 Target.

7 The youngest is an officer in the United
8 States Marine Corps.

9 THE COURT: What I'm going to do at this
10 point, I'm going to ask the questions I asked
11 everybody. I'll go row by row.

12 I'm going to ask about prior -- the questions
13 about prior jury service, victim of a crime, any
14 relationships with respect to law enforcement.

15 With respect -- and only to the first row,
16 have any of you previously served in a criminal or
17 civil trial in federal or state court or grand jury
18 service?

19 Mr. Meyers?

20 PROSPECTIVE JUROR: District Court in
21 Hempstead.

22 THE COURT: How long ago?

23 PROSPECTIVE JUROR: Five, six, years ago.

24 THE COURT: Okay, and the type of case?

25 PROSPECTIVE JUROR: DWI.

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1 THE COURT: Without telling us, did the jury
2 come to a verdict?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Any reason that you wouldn't want
5 to serve again in a criminal case because of that
6 experience?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Anybody else in the first row
9 prior jury service?

10 Mr. Saladino?

11 PROSPECTIVE JUROR: Yeah, criminal case about
12 ten to 15 years ago regarding selling of drugs.

13 Also a civil case about five or six years ago
14 regarding negligence.

15 THE COURT: Okay, both of them go to verdict?

16 PROSPECTIVE JUROR: Yep.

17 THE COURT: The most recent one being?

18 PROSPECTIVE JUROR: The negligence case was
19 probably about roughly five years ago, six years ago,
20 something like that.

21 THE COURT: Okay, you heard me yesterday.
22 Somebody had a similar type of experience where they
23 did a civil trial and I said the burden of proof in a
24 civil trial is usually by a preponderance of the
25 evidence in most instances, in a criminal trial it's

1 beyond a reasonable doubt.

2 Any reason that you'll have -- any reason you
3 wouldn't be able to follow my instructions when you
4 hear about what the burden of proof is and how to apply
5 it in this case?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Anything about those jury
8 experiences that you feel you couldn't serve as a juror
9 in this case?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Anybody else prior jury
12 experience?

13 Mr. O'Shea?

14 PROSPECTIVE JUROR: Served as a witness in
15 federal grand juries, never served as a juror.

16 THE COURT: How about the back row, any type
17 of prior jury service, state, federal, criminal, civil?

18 Mr. Casesa?

19 PROSPECTIVE JUROR: Four years ago I was
20 disqualified. I did not agree with the -- the lawyer
21 didn't like the way I talked about the case.

22 THE COURT: He didn't like your answers?

23 PROSPECTIVE JUROR: Okay.

24 THE COURT: Hopefully they'll like your
25 answers this time around.

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1 Civil or criminal?

2 PROSPECTIVE JUROR: It was civil.

3 THE COURT: Anybody?

4 MS. JOHNSON: Your Honor, I believe
5 Ms. Doughty had her --

6 PROSPECTIVE JUROR: I was a witness for the
7 People for attempted assault, robbery.

8 THE COURT: Okay, so you were a witness for
9 the DA?

10 In this county?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: How long ago?

13 PROSPECTIVE JUROR: Four years ago.

14 THE COURT: Okay: I assume you were spoken
15 to by the DA's Office prior to testifying?

16 You were kind of prepped, if you will?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay, obviously there's a DA, or
19 Assistant DA, in this case that's going to be
20 presenting evidence on behalf of the People of the
21 State of New York.

22 Would you, for any reason, feel impartial
23 towards her or her position because of being called as
24 a witness in this other case?

25 PROSPECTIVE JUROR: I don't think so.

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1 THE COURT: Okay. Would you be able to give
2 the defendant a fair trial, notwithstanding the fact
3 you were called as a witness by the People?

4 PROSPECTIVE JUROR: I'll try.

5 THE COURT: Anybody else prior jury service?
6 Mr. Asche?

7 PROSPECTIVE JUROR: Okay, I was -- four years
8 ago I was in a civil case, but they dismissed me.

9 Then, once before, I got to testify before
10 the grand jury.

11 THE COURT: As a witness?

12 PROSPECTIVE JUROR: No, it was a case
13 involving me, but they had me to come before because
14 after that they got a true bill across the board on a
15 person that was involved.

16 THE COURT: So you testified as a witness?

17 You were called, or subpoenaed, if you will,
18 either by the DA's Office or the grand jury to testify
19 as a witness?

20 PROSPECTIVE JUROR: Yeah.

21 THE COURT: All right.

22 The same questions that I asked Ms. Doughty
23 about her experience, is there any reason that because
24 there's a DA here presenting evidence on behalf of the
25 DA's Office that you would be inclined to favor her or

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1 her position because of your experience, Mr. Asche?

2 PROSPECTIVE JUROR: Well, looking at this
3 case I still have -- I'm still kind of in limbo.

4 THE COURT: All right, when you say in limbo
5 could you elaborate on that a little bit because that
6 doesn't really --

7 PROSPECTIVE JUROR: Really -- really, with
8 the way I feel, there's a possibility I may lean
9 towards the prosecution's corner.

10 THE COURT: You may lean towards the DA?

11 PROSPECTIVE JUROR: Yeah.

12 THE COURT: Okay, all right, I'll let the
13 lawyers explore that with you in a little bit.

14 Going back to the first row, anybody who's --
15 has any close family members, friends, acquaintances
16 that are in law enforcement?

17 Police, detectives?

18 Mr. Meyers?

19 PROSPECTIVE JUROR: Yeah, I have a cousin
20 that's a detective-sergeant in Freeport and I have a
21 lot of friends in the Freeport, Nassau County and New
22 York City Police Department and I cater the Freeport
23 PBA's annual barbecue.

24 THE COURT: Okay. You heard me yesterday,
25 and I repeated this a number of times, that, you know,

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1 police officers are like anybody else. They're like
2 any of us.

3 PROSPECTIVE JUROR: True.

4 THE COURT: They could be telling the truth,
5 they could be mistaken on occasion, they could also lie
6 on occasion.

7 I just want to be -- I just want to have your
8 assurance that you'll just treat them like any other
9 person, any other human being.

10 PROSPECTIVE JUROR: Yes, I will.

11 THE COURT: Any problem with that?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Mr. Fowler?

14 PROSPECTIVE JUROR: My grandparents, my two
15 grandfathers, were New York City police officers and I
16 have a neighbor and uncle.

17 THE COURT: Same question.

18 PROSPECTIVE JUROR: Absolutely fair.

19 THE COURT: Mr. O'Shea, do you have your hand
20 up?

21 PROSPECTIVE JUROR: Yes, besides what I do,
22 my father and his brother were Department of Correction
23 employees for the city. I had an uncle that is NYPD
24 retired.

25 THE COURT: Would you be able to, you know,

1 evaluate police officers or detectives like anybody
2 else?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Would you agree with me with the
5 concept that, like anybody else, police officers could
6 be telling the truth, be mistaken on occasion and lying
7 on occasion?

8 PROSPECTIVE JUROR: Yes, certainly.

9 THE COURT: Anybody else in that first row,
10 law enforcement?

11 Ms. Cioffi?

12 PROSPECTIVE JUROR: Out-of-state police. I'm
13 not from New York.

14 THE COURT: Where are you from?

15 PROSPECTIVE JUROR: Vermont.

16 THE COURT: All right. Anything about those
17 experiences that you feel you couldn't be --

18 PROSPECTIVE JUROR: No.

19 THE COURT: You know, fairly evaluate a
20 police officer?

21 Anybody in the second row, law enforcement
22 question?

23 Okay, all right, anybody - again, going back
24 to the first row - who's -- either yourself, a family
25 member, who's been a victim of a crime?

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1 Anybody in the first row?

2 Ms. Troy?

3 PROSPECTIVE JUROR: Yes, several. One was a
4 hit-and-run on a bicycle, another was a mugging and the
5 last one was a sexual assault.

6 THE COURT: Now, I think you mentioned about
7 three instances.

8 Do they all involve you or somebody else?

9 PROSPECTIVE JUROR: No, they're all me.

10 THE COURT: Okay. Is it something that you
11 feel more comfortable talking about privately or --

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay. We'll get to that in a
14 second.

15 Anybody else in that -- Mr. O'Shea?

16 PROSPECTIVE JUROR: Yeah, my mother was
17 assaulted and robbed, you know, many years ago in
18 Manhattan.

19 THE COURT: Anything about that experience
20 that would affect you here?

21 PROSPECTIVE JUROR: Not at all.

22 THE COURT: Anybody else in the first row?

23 How about the second row, victim of a crime,
24 yourself, loved one?

25 Mr. Asche?

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1 PROSPECTIVE JUROR: Well, this goes back to
2 the grand jury thing. I got into a fight with a drug
3 addict and during the fight he broke a bone in my face
4 and that goes back to the grand jury ordeal.

5 THE COURT: Okay, and that's why you were
6 called as a witness in that case?

7 PROSPECTIVE JUROR: Yeah, what happened, the
8 detective said he came to them, he came open handed,
9 because he stole drugs from a Rastafarian dealer and
10 they put a contract out on his life.

11 THE COURT: And I think you said a few
12 moments ago because of that you feel you may be
13 predisposed to the DA.

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Anybody else in that second row,
16 victim of a crime?

17 All right. And, finally, anybody who has
18 been either accused or convicted of a crime, close
19 family member, anybody?

20 First row?

21 Mr. Fowler?

22 PROSPECTIVE JUROR: When I was in high school
23 I got a ticket for disorderly conduct that was thrown
24 out.

25 THE COURT: And Mr. O'Shea?

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1 PROSPECTIVE JUROR: Driving while ability
2 impaired.

3 THE COURT: Okay.

4 Was that out here or some other location?

5 PROSPECTIVE JUROR: Here on Long Island.

6 THE COURT: How long ago was that?

7 PROSPECTIVE JUROR: 1986.

8 THE COURT: Anybody in the second row,
9 accused, convicted of a crime?

10 Okay. All right, at this point I'm going to
11 turn it over to the attorneys.

12 Ms. Johnson, you got about 15 minutes.

13 MS. JOHNSON: Thank you, Judge.

14 Still good morning, everybody. It gets
15 easier each round.

16 I hope you had a chance to listen to what was
17 going on with the other prospective members of the
18 jury. I'm going to go through a lot of the same
19 questions and same concepts.

20 If there's anything you hear that you want to
21 talk about, please raise your hand. Now is the time to
22 do it, not later when you're possibly sworn in as a
23 juror in this case.

24 Now, you all heard what the charges were and
25 the nature of the case.

1 Is there anybody here that, based on that
2 fact alone, feels that they cannot be a fair and
3 impartial juror in this particular case?

4 Mr. Asche, thank you for your honesty. I
5 think we understand what your concerns are and thank
6 you for that.

7 Is there anybody else here other than
8 Mr. Asche that feels that way?

9 Yes, Ms. Troy, and that's something you
10 wanted to talk about in private.

11 THE COURT: Ms. Troy, I beg your pardon,
12 you're absolutely right.

13 Why don't you come up here with both counsel?

14 (Sidebar conference held as follows:)

15 PROSPECTIVE JUROR: I did want to be honest
16 and up front so they both understood. I understand how
17 important this is. I am also the victim of my father
18 abusing me for years. I'm on the fence -- I really
19 think I could be very analytical, but when somebody
20 walks in and starts talking about it, I'm already like
21 hyper.

22 THE COURT: If you're already getting a
23 physical reaction --

24 PROSPECTIVE JUROR: Oh, absolutely.

25 THE COURT: -- before hearing the

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1 testimony --

2 PROSPECTIVE JUROR: But I just understood how
3 important this was, involving a child.

4 THE COURT: Believe me, we appreciate your
5 candor.

6 Anybody, any questions?

7 MR. SCHECHTER: No.

8 THE COURT: I'm just going to ask you to bear
9 with us. You'll be out of here by 12:30, all right?
10 (Sidebar conference concludes.)

11 MS. JOHNSON: May I continue, Judge?

12 THE COURT: Yes.

13 MS. JOHNSON: Mr. Saladino, knowing the case
14 involves a sexual allegation and charges of sex abuse,
15 would that fact alone prevent you from being a fair and
16 impartial juror in this particular case?

17 PROSPECTIVE JUROR: No.

18 MS. JOHNSON: Mr. O'Shea, how about you?

19 PROSPECTIVE JUROR: No, it wouldn't.

20 MS. JOHNSON: And knowing that there is a
21 family relationship between the victim and the
22 defendant in this case, would that fact alone prevent
23 anybody from being a fair and impartial juror in this
24 particular case?

25 Mr. Toro, how about you?

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1 PROSPECTIVE JUROR: No problem.

2 MS. JOHNSON: Can you assure us of that?

3 PROSPECTIVE JUROR: Yes.

4 MS. JOHNSON: Mr. Sklar, how about you?

5 PROSPECTIVE JUROR: No problem.

6 MS. JOHNSON: Ms. Cioffi, welcome to New
7 York.

8 PROSPECTIVE JUROR: Thanks.

9 MS. JOHNSON: When did you move here?

10 PROSPECTIVE JUROR: Three years ago.

11 MS. JOHNSON: Mr. Meyers, would that fact
12 alone prevent you from being a fair and impartial juror
13 in this case?

14 PROSPECTIVE JUROR: No.

15 MS. JOHNSON: What type of food do you make?
16 What's your favorite?

17 PROSPECTIVE JUROR: Barbecue, of course.

18 MS. JOHNSON: We talked with the other group
19 about difficulty coming to court in front of a group of
20 strangers and talking about sensitive and personal
21 issues.

22 Ms. Striffolino, what types of feelings would
23 you -- do you feel are reasonable for a witness to come
24 into court and talk about personal intimate things?

25 What type of feelings do you think would be

1 something reasonable you would expect?

2 MR. SCHECHTER: Objection, your Honor.

3 MS. JOHNSON: I'll rephrase that.

4 Ms. Strifflino, would you agree with me that
5 it would be difficult for a witness to come in in front
6 of a group of strangers and talk about something
7 personal and intimate?

8 PROSPECTIVE JUROR: Sure.

9 MS. JOHNSON: And can you accept the fact
10 that a witness may cry or not cry, depending on their
11 personal backgrounds?

12 PROSPECTIVE JUROR: Um-hum.

13 MS. JOHNSON: You have to use words.

14 PROSPECTIVE JUROR: I'm sorry, sure.

15 MS. JOHNSON: Mr. Sklar, how about you?

16 PROSPECTIVE JUROR: Of course.

17 MS. JOHNSON: Ms. Doughty?

18 PROSPECTIVE JUROR: Doughty.

19 MS. JOHNSON: What do you think about that?

20 PROSPECTIVE JUROR: Yeah, it would be tough
21 for someone to come.

22 MS. JOHNSON: And is it something that you
23 think would be emotional?

24 PROSPECTIVE JUROR: Yes.

25 MS. JOHNSON: And in our everyday lives we

1 judge the credibility of people that we meet, family
2 members and of strangers.

3 Mr. O'Shea, what types of things in your
4 everyday life do you look for in a person to judge
5 whether or not they're being truthful and honest with
6 you?

7 PROSPECTIVE JUROR: In my everyday life I
8 make those decisions on a daily basis through my
9 employment.

10 MS. JOHNSON: And what factors do you look
11 for to determine if somebody is being truthful with
12 you?

13 PROSPECTIVE JUROR: Based on information we
14 have, based on individual's statement, it's based on
15 officer's statements. It's a collection of everything
16 that I make decisions on.

17 MS. JOHNSON: Would you agree with me that
18 consistency in what somebody tells you would possibly
19 be a factor in what you would consider?

20 PROSPECTIVE JUROR: Yes, consistency.

21 MS. JOHNSON: How about somebody's demeanor?
22 Would you also think that would be a factor
23 you would consider?

24 PROSPECTIVE JUROR: It can be looked at.

25 MS. JOHNSON: Mr. Daniel, do you agree with

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1 what Mr. O'Shea is saying?

2 PROSPECTIVE JUROR: Absolutely.

3 MS. JOHNSON: And would you also agree that
4 somebody's age would be a factor that you would
5 consider?

6 PROSPECTIVE JUROR: Certainly.

7 MS. JOHNSON: And you indicated before, I'm
8 just going to ask you now, that you're a sole
9 practitioner?

10 PROSPECTIVE JUROR: Yes, I am.

11 MS. JOHNSON: Knowing this trial will last
12 two weeks, will that in any way prevent you from being
13 a fair and impartial juror in light of you have a
14 practice to run?

15 PROSPECTIVE JUROR: It wouldn't prevent me
16 from being fair and impartial, however I feel I may not
17 be as focused as I should be in order to make a fair
18 and impartial decision.

19 MS. JOHNSON: Are you concerned, and please
20 just be honest with us now, that your focus may be
21 directed at your business or practice?

22 PROSPECTIVE JUROR: Unfortunately, it may be.

23 MS. JOHNSON: Would that prevent you from
24 being fair in this case?

25 PROSPECTIVE JUROR: It wouldn't prevent me

1 from being fair, but my concern is really whether or
2 not I will be able to assess evidence as thoroughly as
3 I should be in order to reach a fair and impartial
4 decision.

5 MS. JOHNSON: Mr. Toro?

6 PROSPECTIVE JUROR: I agree with him. I
7 don't own my own business, but I am in a similar
8 situation.

9 MS. JOHNSON: What is it about your situation
10 that would prevent you from being a fair and impartial
11 juror in this particular case?

12 PROSPECTIVE JUROR: I think the way he worded
13 it, there is nothing presented so far that would keep
14 me from being unfair, but just the fact I wouldn't be
15 100 percent focused due to the fact I have a lot of
16 other things on my mind.

17 MS. JOHNSON: Thank you for your honesty.

18 Anybody else feel that way?

19 PROSPECTIVE JUROR: I feel that way. I
20 couldn't afford to take two weeks off work to come
21 here.

22 MS. JOHNSON: Would that prevent you from
23 listening?

24 PROSPECTIVE JUROR: It wouldn't prevent me
25 from being an impartial juror, but I would be focused

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1 on trying to pay my car, pay everything.

2 MS. JOHNSON: Would you be able to listen to
3 the evidence --

4 PROSPECTIVE JUROR: Yeah.

5 MS. JOHNSON: -- and keep an open mind, be
6 objective?

7 PROSPECTIVE JUROR: I would be objective,
8 yes, but I don't think I will be as focused as I should
9 be.

10 MS. JOHNSON: Thank you for your honesty on
11 that.

12 Anybody else who feels that way?

13 Mr. Lynch, would you agree with me that fear
14 is not something that happens at a moment in time and
15 it's something that can continue?

16 PROSPECTIVE JUROR: Could be either way,
17 depending on the situation.

18 MS. JOHNSON: And you heard the -- or
19 hopefully you heard the example I was using with the
20 other group about somebody being afraid of dogs or
21 afraid to fly.

22 Would you agree with me that it is reasonable
23 that somebody could hold a fear of something for a
24 period of time and not just at a brief moment?

25 PROSPECTIVE JUROR: Absolutely. My mother is

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1 always petrified of dogs and I've always had a dog my
2 adult life.

3 MS. JOHNSON: And did she react to your dog
4 in a certain way?

5 PROSPECTIVE JUROR: She wouldn't come into
6 the house. She's scared stiff.

7 MS. JOHNSON: And was her not coming into the
8 house, is it fair to say that was her way with dealing
9 with her fear?

10 PROSPECTIVE JUROR: Yes.

11 MS. JOHNSON: Whether you agree with it or
12 not, it was her personal way of handling it.

13 Would you agree with that?

14 PROSPECTIVE JUROR: Yes, and I reacted by
15 putting the dog into the basement, locking the dog in
16 the basement.

17 MS. JOHNSON: Your son is a lieutenant in the
18 Fire Department?

19 PROSPECTIVE JUROR: I'm sorry, Fire
20 Department, yes.

21 MS. JOHNSON: Where does he work?

22 PROSPECTIVE JUROR: On the Brooklyn side of
23 the Manhattan Bridge.

24 MS. JOHNSON: How long has he been doing
25 that?

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1 PROSPECTIVE JUROR: A lot of years. For
2 eight years he was a paramedic with the New York City
3 EMS and it was taken over by the FDNY. He was taken
4 over and at the same time he got called as a fireman
5 for the FDNY and he has been there, total, about 18
6 years.

7 MS. JOHNSON: Two years to retire, right?

8 PROSPECTIVE JUROR: He could retire soon.

9 MS. JOHNSON: Mr. Casesa, would you agree
10 that fear is not something that is just a moment in
11 time and it can continue?

12 PROSPECTIVE JUROR: Yes.

13 MS. JOHNSON: Would you agree with Mr. Lynch
14 that sometimes people react or handle fear by not
15 participating in certain activities?

16 PROSPECTIVE JUROR: I agree, yeah.

17 MS. JOHNSON: Is that reasonable to you?

18 PROSPECTIVE JUROR: Yeah. I have personal --
19 some dogs, big ones, I'm petrified and I don't know
20 why. As a kid I was bitten and it's still here and
21 that's 50 years ago.

22 MS. JOHNSON: And when you were bit as a
23 child by the dog, that is something that stayed with
24 you, right?

25 PROSPECTIVE JUROR: Yeah, every time I see a

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1 huge dog coming my way I cross the other way. I can't
2 help it. We have a little one at home, but no problem
3 with that.

4 MS. JOHNSON: They're usually the loudest,
5 right?

6 PROSPECTIVE JUROR: Yeah.

7 MS. JOHNSON: Mr. Fowler, does it make sense
8 to you that a crime would not be committed in public,
9 in a public setting?

10 Does that make sense to you?

11 PROSPECTIVE JUROR: Yes.

12 MS. JOHNSON: And is it also reasonable to
13 you that a sex crime, in particular, would not be
14 committed in public in front of other people?

15 PROSPECTIVE JUROR: Yes.

16 MS. JOHNSON: And what factors would you --
17 do you think are reasonable as to why someone would not
18 report a crime immediately after it occurred?

19 What things do you think are reasonable?

20 PROSPECTIVE JUROR: Fear of reprisal, the
21 taboo factors. You know, newspapers don't publish
22 names of victims of sexual crimes. There's certainly a
23 taboo.

24 MS. JOHNSON: Mr. Saladino, do you agree with
25 Mr. Fowler?

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1 PROSPECTIVE JUROR: Yes, embarrassment.

2 MS. JOHNSON: Would you agree fear would be a
3 factor?

4 PROSPECTIVE JUROR: Yes.

5 MS. JOHNSON: Not the only, but fear would be
6 a factor?

7 PROSPECTIVE JUROR: Yes.

8 MS. JOHNSON: Ms. Strifflino?

9 PROSPECTIVE JUROR: Fear of telling people,
10 people knowing or how they would react to it or believe
11 it.

12 MS. JOHNSON: Ms. Doughty, how about you?

13 PROSPECTIVE JUROR: I agree with her.

14 MS. JOHNSON: Mr. Sklar, do you agree with
15 that and both those ladies?

16 PROSPECTIVE JUROR: Yeah, I think there are a
17 lot of reasons why somebody might not talk about an
18 experience they had; fear or the feelings of blame or
19 not wanting to hurt somebody close to you.

20 MS. JOHNSON: And would you agree that a
21 person's age may be a factor that would be a
22 consideration?

23 PROSPECTIVE JUROR: Sure.

24 MS. JOHNSON: What about the relationship
25 between the victim and the person that they are making

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1 allegation against, would that be a factor that you
2 think is reasonable?

3 PROSPECTIVE JUROR: Oh, yeah, it's
4 reasonable. It certainly could be a factor.

5 MS. JOHNSON: Mr. Daniel, how about you?
6 Would you agree with Mr. Sklar about that?

7 PROSPECTIVE JUROR: What is the question,
8 again?

9 MS. JOHNSON: About the relationship between
10 the victim and the person allegedly committing the
11 crime, that that relationship could affect when the
12 person reports the crime.

13 PROSPECTIVE JUROR: Absolutely. Absolutely.

14 MS. JOHNSON: Mr. O'Shea, do you agree with
15 that?

16 PROSPECTIVE JUROR: Yes.

17 MS. JOHNSON: We talked a little bit about
18 how crimes don't always occur in public.

19 Now, Mr. O'Shea, let's say Mr. Fowler, who
20 you never met before, right?

21 PROSPECTIVE JUROR: No, never met.

22 MS. JOHNSON: Told you there was a car
23 accident on the corner of Old Country Road and he saw
24 it. You've never met him before, never spoken to him.

25 What factors would you look for and what

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1 other evidence would you look for to determine whether
2 or not he's being honest and truthful with you?

3 PROSPECTIVE JUROR: You stated earlier about
4 the glass in the street, but "Did you hear sirens at
5 the time it allegedly occurred," things of that nature.

6 MS. JOHNSON: We call that corroboration or
7 we call that supporting what Mr. Fowler told you.

8 Mr. Sklar, would you agree that physical
9 evidence would be something that would corroborate what
10 Mr. Fowler says about a car accident?

11 PROSPECTIVE JUROR: Sure.

12 MS. JOHNSON: Mr. Daniel, would you agree
13 with that?

14 PROSPECTIVE JUROR: Absolutely.

15 MS. JOHNSON: Mr. Saladino, how about you?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Two minutes, Ms. Johnson.

18 MS. JOHNSON: Thank you, Judge.

19 Mr. Meyers, do you agree with that?

20 PROSPECTIVE JUROR: Yes.

21 MS. JOHNSON: Would you agree that how a
22 witness testifies would be a factor you would consider
23 in determining if they were being honest and truthful
24 with you?

25 PROSPECTIVE JUROR: Yes.

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1 MS. JOHNSON: And what types of factors about
2 a witness would you think are reasonable when judging
3 their credibility?

4 PROSPECTIVE JUROR: Their demeanor, their
5 appearance, their nervousness, whatever.

6 MS. JOHNSON: How many of you here have
7 teenage children or live with a teenager, lived through
8 having a child who is a teenager?

9 PROSPECTIVE JUROR: Still living it.

10 MS. JOHNSON: You're still surviving?

11 PROSPECTIVE JUROR: Just starting.

12 MS. JOHNSON: Does she ever come home and
13 tell you something that happened in school?

14 PROSPECTIVE JUROR: Yes.

15 MS. JOHNSON: And sometimes she's truthful
16 and sometimes not.

17 PROSPECTIVE JUROR: Sometimes you don't know.

18 MS. JOHNSON: And you don't want to just
19 always take her word for it, would you look to other
20 factors in determining whether or not she's being
21 truthful with you?

22 PROSPECTIVE JUROR: Depending on what it was
23 she said. It might not be something I need to look
24 into.

25 MS. JOHNSON: And do you use your everyday

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1 life skills to determine whether or not she's being
2 truthful with you?

3 PROSPECTIVE JUROR: Certainly.

4 MS. JOHNSON: Anything I haven't covered or
5 anything anybody wants to talk about that I haven't
6 raised now?

7 And is there anybody here who, if I prove my
8 case beyond a reasonable doubt -- that cannot convict
9 this defendant of the crimes he is charged with if I
10 prove my case to you beyond a reasonable doubt?

11 Is there anybody that would not be able to
12 find the defendant guilty?

13 Thank you all for your time.

14 THE COURT: Thank you, Ms. Johnson.

15 Mr. Schechter?

16 MR. SCHECHTER: May it please the Court.

17 For lack of a better word, I think we can
18 call it a pregnant pause.

19 Now, ladies and gentlemen, I'm sure you heard
20 some of my questions when you were sitting in the
21 gallery outside there and I don't mean to be
22 repetitive, but your answers and your feelings are
23 extremely important to me and to my client, as well as
24 to the prosecution.

25 Now, several of you have indicated that you

1 have either people in law enforcement, your families or
2 you're friendly with them or have been exposed to them.

3 And some have very favorable opinions of
4 police, some have, perhaps, not as favorable opinions
5 of police, but those opinions that you've expressed are
6 certainly things I would like to explore.

7 Firstly, anybody remember the rock-and-roll
8 song CC Rider?

9 Sorry, about that, Mr. Saladino, that's what
10 came to my mind when I first heard CC. It just shows
11 my age I guess.

12 Mr. Meyers, you work as a chef at C.W. Post,
13 are single.

14 Not only is my concern that you have a lot of
15 friends in the Police Department, but part of that is
16 BBQ.

17 None are going to be testifying from
18 Freeport, but one is a New York City police officer,
19 and my concern is you may be feeling any kind of
20 pressure being compelled to feel in a positive way
21 towards police which would make your evaluation of them
22 somewhat tarnished because of your dealings with them.
23 You have relatives you care about on the force.

24 Do you think that might enter into it at all?

25 PROSPECTIVE JUROR: Of course, I do have a

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1 favorable opinion of police officers, but you can't
2 give their word any more credence than you would anyone
3 else.

4 MR. SCHECHTER: Well, as I said before, and I
5 used the metaphor the fox in charge of the chicken
6 coop, and what I mean by that is that when a person is
7 arrested and he's locked up in the precinct, there's no
8 outside people coming in to oversee what's going on so
9 what happens in the precinct occurs between the people
10 in the precinct and the police officers.

11 And so when you evaluate what someone is
12 saying or how they say it or whether a person is
13 terrorized or not terrorized or whether a person feels
14 he has to go by a certain script or something
15 pre-programmed, it's not always easy to tell, would you
16 agree?

17 PROSPECTIVE JUROR: Yes.

18 MR. SCHECHTER: And I'll tell you straight
19 up, with respect to one or more of those police
20 officers I'm going to be going into certain areas with
21 respect to this matter which might not be pleasant with
22 respect to the implications of my questions.

23 Would that make you uncomfortable?

24 PROSPECTIVE JUROR: Probably not.

25 MR. SCHECHTER: You said probably, then

1 probably not.

2 PROSPECTIVE JUROR: Probably not. It
3 wouldn't -- like I said, it wouldn't make a difference
4 whether they said it as a policeman or a person. They
5 would be telling what they feel is right.

6 MR. SCHECHTER: Okay. Do you feel that a
7 police officer is more likely than a civilian to tell
8 the truth?

9 PROSPECTIVE JUROR: Not more likely.

10 MR. SCHECHTER: Mr. O'Shea, I perked up my
11 ears. You work for the federal government.

12 In what capacity?

13 PROSPECTIVE JUROR: Border patrol agency.

14 MR. SCHECHTER: ICE?

15 PROSPECTIVE JUROR: CBP, same department.

16 MR. SCHECHTER: You've testified in federal
17 grand juries?

18 PROSPECTIVE JUROR: Yes.

19 MR. SCHECHTER: You obviously have a lot of
20 contact with police officers.

21 PROSPECTIVE JUROR: Yes.

22 MR. SCHECHTER: Are you more inclined to
23 believe a police officer than a civilian?

24 PROSPECTIVE JUROR: No, I'm not.

25 MR. SCHECHTER: Ms. Cioffi, you indicated you

1 would have difficulty focusing because of --

2 PROSPECTIVE JUROR: Financial difficulties.

3 MR. SCHECHTER: -- work issues.

4 I think you also indicated that Mr. Daniel?

5 PROSPECTIVE JUROR: Absolutely.

6 MR. SCHECHTER: And you are a colleague, I'll
7 get into that in a second, not that we know each other,
8 but we will go into that in just one second.

9 PROSPECTIVE JUROR: Not a problem.

10 MR. SCHECHTER: Now, remember I had asked
11 other jurors in this case whether when you evaluate
12 someone and the truth or exaggeration or untruthfulness
13 of their testimony, that there may be surrounding
14 factors that you would consider.

15 I mean, I gave the example of very difficult,
16 if not impossible, to dance angry. You can't dance
17 angry because you're angry and you're tense and can't
18 move like that.

19 But also would you say you would look at that
20 person's actions contemporaneous or basically at the
21 same time that they're saying one thing, perhaps their
22 reaction showed that they're feeling or living another?

23 What do I mean by that?

24 In other words, let's say I tell you I'm
25 angry and then I go out onto that dance floor and I

1 rock it.

2 You say, "He doesn't look angry to me,"
3 something like that.

4 If you saw that would you use that in
5 determining is he is really angry, is he really in that
6 situation he says he's in?

7 Would you be able to do that?

8 PROSPECTIVE JUROR: Determine whether his
9 voice compared to his actions are different?

10 MR. SCHECHTER: Yeah.

11 In other words, you're looking at the
12 surrounding actions of that person around the time he
13 says he's angry.

14 Maybe he's dancing.

15 Maybe he says, "I don't like to talk to
16 women," and there he is talking to A, B, C, D, E, F and
17 G.

18 Or, "I don't like talking to guys," and so on
19 and so forth and then all of a sudden you see his
20 conduct belies what he's saying.

21 PROSPECTIVE JUROR: Actions speak louder than
22 words.

23 MR. SCHECHTER: Okay, thank you.

24 Anybody have any problems with that, actions
25 speak louder than words?

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1 Now, one of my concerns with you, Mr. Sklar,
2 is you are a teacher.

3 PROSPECTIVE JUROR: Yes.

4 MR. SCHECHTER: And, as such, from what I
5 gather from your answers, you appear to be a very
6 caring teacher.

7 And the young lady that's going to be
8 testifying here is 18 years old. The allegations are
9 that the incident occurred when she was in high school
10 and I would like to know do you feel because of the
11 fact that you are a teacher, do you feel more
12 empathetic with her, you would feel more inclined to
13 either believe her or you might -- and that might color
14 the way you feel or think about this case?

15 PROSPECTIVE JUROR: I don't think so. No, I
16 think kids -- I teach younger kids, but kids and adults
17 can both tell the truth or lie and I've seen plenty of
18 kids do either.

19 MR. SCHECHTER: Now, there might be reasons
20 why people lie and you might not have a clue about
21 those reasons.

22 PROSPECTIVE JUROR: That's true.

23 MR. SCHECHTER: As a teacher, and I think
24 somebody else indicated that you are a teacher as well
25 and the same thing goes for you, you seem to be very

1 dedicated to your profession.

2 You teach in the Bronx?

3 PROSPECTIVE JUROR: Yes.

4 MR. SCHECHTER: Let me give you general
5 hypothetical, the same example I gave to that lady
6 sworn in as a juror before, and that is you're in
7 class. Student comes over to you and says,
8 "Mr. Sklar," or, "Mr. Fowler, I have a problem," and
9 they come to the class and they say, "Well, you know,
10 things aren't good at home. My parents this, my
11 parents that."

12 Now, I was a teacher when I went to law
13 school at night so I understand what it's like to be a
14 teacher. And I had to deal with students and
15 situations as I'm indicating to you.

16 A student comes in and -- a young attractive
17 girl, 14 years old.

18 Now, we lawyers have a natural caution. We
19 just have it and it's programmed from law school,
20 everything has to be PYA, basically.

21 Here's this girl. You have no idea what
22 she's about. You only see her in school and she's shy
23 and reticent.

24 Next thing you know she spends 15 minutes --
25 she has an attention issue. Next thing you know she

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1 brags to the whole school, "I was really intimate with
2 Mr. Sklar and Mr. Fowler."

3 MS. JOHNSON: Judge, can I ask what's PYA?

4 MR. SCHECHTER: Well, PYB, protect your butt.
5 I didn't want to --

6 THE COURT: Are you glad you asked that
7 question, Ms. Johnson?

8 MS. JOHNSON: Now I know what they both mean.

9 THE COURT: We all learned something new
10 today.

11 MR. SCHECHTER: Led her right into that one.

12 So now an unfounded allegation is made
13 against you.

14 You would agree, it's very hard to prove the
15 negative. It's your word against her word, sometimes,
16 and it's a child and she's there and she's going to
17 make an allegation against you, but the fact is you
18 didn't do it.

19 You would agree that that requires a very
20 important analysis on the part of the fact finder as to
21 what really happened here, right?

22 PROSPECTIVE JUROR: I would hope, yeah.

23 MR. SCHECHTER: And so you could imagine a
24 situation when someone is charged with something it's
25 almost impossible to prove the negative.

1 PROSPECTIVE JUROR: Sure.

2 MR. SCHECHTER: Now, here's another scenario
3 and this other scenario is something I asked the other
4 jurors.

5 You may not like the person. You may think,
6 "I would not get a beer with that person. I would not
7 want to have coffee with that person. I don't like
8 that person."

9 Person has got a bad reputation. Barry
10 Bonds, hopefully -- most people know Barry Bonds, great
11 athlete. Maybe you don't like him as a fan, but he's
12 very personable one on one. The fact is you may not
13 like him.

14 Do I have the assurance of everyone here that
15 you will put aside whatever personal feelings you may
16 have for someone in analyzing what the situation is?

17 That person may do things you wouldn't do.
18 Barry Bonds used steroids. You may not use steroids.
19 But that doesn't mean Barry Bonds beat his wife, okay?

20 Now, if I tell you all -- I gave this analogy
21 before. In order to prove this person is guilty of a
22 theoretical crime I'm making up, you have to show he
23 has got red pants, he's carrying a yellow balloon and
24 he puts his hands in the air.

25 People showed he's got red pants, yellow

1 balloon, but can't put the arm in the air.

2 But you don't like this guy, wouldn't wear
3 those red pants, wouldn't engage in that conduct, red
4 pants, yellow balloon, and those feelings you have are
5 strong. I'm doing this metaphorically, you
6 understand. They haven't proved he raised his hands in
7 the air.

8 You would like to, perhaps, because you don't
9 like this guy, do something to him, not physically,
10 maybe, but otherwise.

11 Would you be able, individually, to set aside
12 your opinions, your personal opinions, of this person
13 and vote according to your analysis, vote according to
14 the Judge's definition of reasonable doubt and give
15 that person a fair shake?

16 Do any of you feel that because of the
17 personal feelings that you might have -- there's a
18 young girl that's going to be testifying here. She's
19 18. This allegedly happened to her when she was 17.

20 Do any of you feel that because that person
21 is going to testify that you would not be able to
22 maintain this objectivity and do this analysis,
23 utilizing what I've asked you with respect to the
24 surrounding circumstances, perhaps activities done by
25 that person, things she's done that might belie what

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1 she says happened?

2 Anybody unable to do that?

3 Mr. Meyers?

4 PROSPECTIVE JUROR: No.

5 MR. SCHECHTER: Will you be able to set aside
6 whatever emotions or personal feelings you have to
7 analyze the situation?

8 PROSPECTIVE JUROR: Yes.

9 MR. SCHECHTER: How about you, Ms. Cioffi?

10 PROSPECTIVE JUROR: Yes.

11 MR. SCHECHTER: Would you be able to set
12 aside the fact you've got to get back to work and look
13 and listen and analyze?

14 PROSPECTIVE JUROR: Possibly.

15 MR. SCHECHTER: Just possibly. Thank you.

16 Mr. Fowler?

17 PROSPECTIVE JUROR: I'm a big fan of John
18 Adams and he was the one who defended the Boston
19 massacre. Five were acquitted and two were convicted
20 and, to me, that's a real testament to the American
21 justice system.

22 MR. SCHECHTER: Saw that on HBO?

23 PROSPECTIVE JUROR: Read it in McCulloch's
24 book.

25 MR. SCHECHTER: He wasn't liked very much.